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SAN FRANCISCO
PORT COMMISSION

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REGULAR MEETING
4:00 P.M., TUESDAY, JANUARY 9, 1996
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CALIFORNIA

AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - November 14, 1995

3. **EXECUTIVE**

   A. Election of Port Commission Officers

   B. Executive Director's Report

4. **SPECIAL ITEM**

   A. Agreement between the Bay Conservation and Development Commission and Port to develop and process amendments to BCDC's plans as necessary to implement the Waterfront Land Use Plan. (Resolution No. 96-02)

5. **TENANT & MARITIME SERVICES**

   A. Approval of percentage rental adjustments for Castagnola's, Fisherman's Grotto, Nick's Lighthouse, Sabella & LaTorre, Tarantino's, Cresci's Brothers, Franciscan Restaurant and Guardino's at Fisherman's Wharf. (Resolution No. 96-03)

   B. Approval of Eighteen-Month Lease to Allright Cal., Inc. for Surface Parking Lot Operations at Embarcadero Median Lots E, F, and G. (Resolution No. 96-04)

   C. Approval of Landlord's Consent to Assignment of Parking Lease from JMC Associates to WCB Twenty-Eight Limited Partnership at Seawall Lot 328 located at Spear Street and the Embarcadero. (Resolution No. 96-05)

   D. Approval of month-to-month rent policy for commercial fishing gear storage. (Resolution No. 96-06)

6. **FACILITIES & OPERATIONS**

   A. Professional Services Contract No. SA 3920019, "Asbestos Abatement Oversight and Consultation Services," with Galson Corporation, approval to authorize the execution

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of the remaining segment of Phase 3 of the original contract, for the consulting services for asbestos abatement of the new boiler room, vent shaft, cooling tower and shear wall areas of the Ferry Building for $30,000. (Resolution No. 96-07)

B. Authorization to issue a Type 2 Modification for $35,000 to Chiang C.M. Construction, Inc. for Contract No. 2608, "Piers 3, 29, 31, Cornice Repair." (Resolution No. 96-08)

C. Informational Briefing: Professional Services Contract No. SA 3930045, "Downtown Ferry Terminal Project, Phase II," Roma Design Group, Project Status Update.

7. PLANNING & DEVELOPMENT

8. ADMINISTRATION

9. CONSENT CALENDAR

A. Approval of Port staff representative to attend the American Association of Port Authorities Port Property Management and Pricing Seminar in San Diego on January 17-19, 1996, in accordance with the Port's Fiscal Year 1995-1996 budget. (Resolution No. 96-09)

B. Approval of travel for one Port representative to attend meetings in Seattle, Washington on December 10-11, 1995 related to reforms of Federal laws governing the cruise industry, in accordance with the Port's Fiscal Year 1995-1996 budget. (Resolution No. 96-10)

C. Approval of month-to-month lease with the State of California Fifth District Agricultural Association at the Pier 27 Administration Building located on the Embarcadero at Lombard Street. (Resolution No. 96-11)

10. NEW BUSINESS / PUBLIC COMMENT

11. EXECUTIVE SESSION

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - ***This session is closed to any non-Port representative.***

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: James Lazarus, Director-Special Projects
AES Representative: Mark Woodruff

Under Negotiation: ____ Price ____ Terms of Payment __✓__ Both

An executive session has been calendared to discuss real property negotiations between the Port and AES, a California corporation, regarding Cogeneration Plant. This is specifically authorized under California Government Code Section 54956.8.

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION AND ANTICIPATED LITIGATION MATTERS

(1) Kenealey v. CCSF, et.al; CCSF v. PG&E, et.al.
San Francisco Superior Court No. 949-476

(2) George v. CCSF, et.al
San Francisco Superior Court No. 963-764

(3) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

(a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

The City Attorney is of the opinion that based on existing facts and circumstances, discussion of existing litigation and anticipated litigation matters in open session would prejudice the legal position of the Port. An executive session is specifically authorized under California Government Code Section 54956.9(a)(c).

C. Vote in open session on whether to disclose Executive Session discussions (S.F. Admin. Code Sec. 67.14)

12. ADJOURNMENT

Public comment is permitted on any matter within Port jurisdiction, and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary.

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

December 29, 1995

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Agreement with the Bay Conservation and Development Commission for Work Related to the Waterfront Land Use Plan

DIRECTOR'S RECOMMENDATION: APPROVE AGREEMENT WITH BCDC

The Draft Waterfront Land Use Plan ("Waterfront Plan") introduces some land use objectives and policies that are not currently addressed by or consistent with the existing plans and regulations of other regulatory agencies with jurisdiction over Port property. In order to fully implement the Waterfront Plan and provide consistency with other plans and regulations affecting the Port, these plans and regulations must be made consistent with the Waterfront Plan.

One of the agencies having regulatory authority over Port property is the San Francisco Bay Conservation and Development Commission ("BCDC"). BCDC has permitting authority over any project within a 100-foot shoreline band of the Bay. BCDC policies which apply to Port property are primarily contained in the San Francisco Bay Plan, the San Francisco Special Area Plan, the San Francisco Total Design Plan and BCDC's regulations ("BCDC's Planning Documents"). Amendments to BCDC's Planning Documents will be necessary to ensure consistency between BCDC and Port policies regarding land uses, public access and urban design and to implement the Waterfront Plan.

THIS PRINT COVERS CALENDAR ITEM NO. 4A

Port staff have been working with BCDC staff to propose amendments to BCDC's land use plans and regulations to make them consistent with Waterfront Plan objectives. As part of this effort, Port staff and BCDC staff have proposed an inter-agency agreement to develop and process Port plans and policies regarding uses, public access and urban design, to develop and process amendments to the San Francisco Bay Plan, Special Area Plan and other documents as necessary to implement such policies, the San Francisco Waterfront Land Use Plan and the policies of the McAteer-Petris Act. A copy of the proposed agreement is attached to this memorandum.

Port staff anticipates that during 1996 a draft EIR will be published, EIR hearings and possible certification will occur, the Port Commission will hold hearings and take final action on the Waterfront Plan, and the Planning Commission and the Board of Supervisors will hold hearings and take action on conforming amendments to the San Francisco Master Plan and Planning Code. The attached Agreement has been drafted to ensure that hearings and actions on conforming amendments to BCDC's Planning Documents will also occur during 1996.

The proposed Agreement states that the Port will provide financial assistance (which assistance will not exceed Forty Nine Thousand Dollars [$49,000]) for a consultant to assist BCDC in the performance of the work set forth in the Agreement, including the following:

- Clarification of the concepts of "maximum feasible public access" and "water-oriented uses" for Port areas within BCDC's jurisdiction.

- Review and classification of pier repairs to determine regulatory restrictions on uses and requirements for public access.

- Development of proposed amendments to BCDC replacement fill policies to allow further flexibility in reconfiguration of piers and substantial repairs of piers for water-oriented commercial recreation uses.

- Determination of the nature and duration of interim uses, or incidental non-water-oriented uses permitted on the Port's piers.

- Development of a mechanism to allow rehabilitation of existing bulkhead buildings for existing and/or future non- water-oriented uses.

- Streamlining the permit application process.

- Amendments to BCDC's planning documents.

- Review of drafts of the EIR to ensure it will meet BCDC's environmental review requirements.

Port staff believe that consistency between the Port's and BCDC's land use, public access and urban design policies will best be achieved through a cooperative planning process that includes coordinated BCDC and Port public hearings and actions. The attached Agreement provides a schedule for completing BCDC work, contemporaneously with expected final adoption of the Port's Waterfront Plan and conforming amendments to the City's Master Plan and Planning Code.

Port staff believe that a coordinated process to complete this work will help provide a uniform forum for participation and review by concerned San Francisco public and civic organizations, public agencies and for groups with special concerns about the Bay such as the Save San Francisco Bay Association and the Bay Planning Coalition.

Prepared by: Anne E. Cook
Planner

I: bcdcmou.agd

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-02

WHEREAS, Charter Section 3.581 empowers the Port Commission with power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, The Port's Draft Waterfront Land Use Plan ("Waterfront Plan") introduces some land use objectives and policies that are not currently addressed by or consistent with the existing plans and regulations of other regulatory agencies with jurisdiction over Port property, including the San Francisco Bay Conservation and Development Commission ("BCDC"); and

WHEREAS, In order to fully implement the Waterfront Plan and provide consistency with BCDC's plans and regulations affecting the Port, BCDC's plans and regulations and the Waterfront Plan must be made consistent; and

WHEREAS, In order to successfully develop and process amendments to the San Francisco Bay Plan, Special Area Plan and other BCDC policy documents as necessary, the Port must also develop and process Port plans and policies regarding uses, public access and urban design; and

WHEREAS, The Port anticipates processing and adopting the final Waterfront Plan and conforming amendments during 1996; and

WHEREAS, A coordinated process to complete the work on the Waterfront Plan and proposed amendments to BCDC policy and regulations will help provide a uniform forum for participation and review by concerned San Francisco public and civic organizations, public agencies and for groups with special concerns about the Bay; and

WHEREAS, Port staff and BCDC staff have negotiated an Agreement in the form attached hereto, whereby the Port will provide financial assistance for a consultant to assist BCDC in the performance of the work set forth therein regarding development and processing of Port plans and policies regarding uses, public access and urban design policies, and amendments to the San Francisco Bay Plan, Special Area Plan and other documents as necessary to implement such Port policies, the San Francisco Waterfront Land Use Plan and the policies of the McAteer-Petris Act; now, therefore, be it

RESOLVED, that the Port Commission hereby approves the Agreement between the Port and BCDC, substantially in the form attached hereto, and that the Executive Director is hereby authorized to execute the Agreement and any other necessary documents and to take all such actions as necessary to carry out the intent of the Agreement, including but not limited to providing the financial assistance for a consultant to assist BCDC.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 9, 1996.

_____
Secretary

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AGREEMENT BETWEEN THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION AND THE PORT OF SAN FRANCISCO TO DEVELOP AND PROCESS PORT PLANS AND POLICIES REGARDING USES, PUBLIC ACCESS AND URBAN DESIGN AND AMENDMENTS TO THE SAN FRANCISCO BAY PLAN, SPECIAL AREA PLAN AND OTHER DOCUMENTS AS NECESSARY TO IMPLEMENT SUCH POLICIES, THE SAN FRANCISCO WATERFRONT LAND USE PLAN AND THE POLICIES OF THE MCATEER-PETRIS ACT

The San Francisco Bay Conservation and Development Commission ("Commission") and the Port of San Francisco ("Port") hereby enter into this agreement by which they set forth a work plan, public process, and schedule to process Port plans and policies regarding uses, public access and urban design and to implement the San Francisco Waterfront Land Use Plan ("Waterfront Plan") and such plans and policies through amendment of the San Francisco Bay Plan, the San Francisco Special Area Plan and other Commission documents as required, all in a manner consistent with the McAteer-Petris Act, as follows:

WHEREAS, pursuant to Proposition H passed by the voters of San Francisco in November 1990, the Port of San Francisco, assisted by a Waterfront Plan Advisory Board, numerous civic organizations and concerned citizens, has engaged in a multi-year planning process to define for the San Francisco waterfront permissible land uses, port expansion and other development opportunities, requirements for open space, public access, urban design and historic preservation; and

WHEREAS, on July 26, 1994, the Waterfront Plan Advisory Board transmitted to the Port Commission a recommended draft Waterfront Plan, and the Port Commission anticipates an extensive public review of the draft Waterfront Plan together with further provisions governing public access, urban design, and historic preservation (together, "Waterfront Planning Documents"), said review to include, in 1996, a Draft EIR, EIR hearings and possible certification, Port Commission hearings and action on the Waterfront Plan, as well as hearings and action on conforming amendments to the San Francisco Master Plan and Planning Code by the Planning Commission and Board of Supervisors of San Francisco; and

WHEREAS, the Commission and the Port recognize that such Waterfront Planning Documents implicate important provisions of the McAteer Petris Act, the San Francisco Bay Plan ("Bay Plan"), the San Francisco Waterfront Special Area Plan ("Area Plan") and potentially other Commission documents (together, "Commission Documents"), and that amendments to such Commission Documents are necessary to implement the Waterfront Planning Documents and to ensure consistency among Commission and City documents, and the McAteer Petris Act with regard to areas of Commission concern such as public access, water dependent uses, and Bay fill; and

WHEREAS, the amendment of such Commission Documents requires public notice, hearing and action by the Commission pursuant to the McAteer Petris Act and Commission regulations; and

WHEREAS, the Commission and the Port desire that the Waterfront Planning Documents and the Commission Documents provide consistent policies for the planning, urban design and development of new land uses and public access on the San Francisco waterfront consistent with the McAteer Petris Act; and

WHEREAS, the Commission and the Port believe that such consistency will only be created through a cooperative and open process and a coordinated and parallel schedule for Commission and Port hearings and actions, including joint workshops,

NOW, THEREFORE, the Commission and the Port agree as follows:

1. Coordination and Joint Workshops. The Commission and Port will cooperate at the staff and Commission levels to ensure that Waterfront Planning Documents and Commission Documents are, to the maximum extent feasible, consistent with each other. Where useful and appropriate, the Commissions will conduct joint workshops or hearings to facilitate agency coordination and public input.

2. Contemporaneous Processing and Schedule. The Commission and the Port agree to use their best efforts to ensure that the Commission and Port/City public processes are conducted contemporaneously and in a coordinated manner. Provided that the proposed Waterfront Planning Documents and Commission Documents are sufficiently developed, the Commission will commence its required public hearings on approval of Commission Documents at the same time the Port hears and adopts the Waterfront Plan. The Commission will use its best efforts, consistent with the participation of the public and other agencies, to conclude hearings and act on the proposed Commission Documents at the same time the San Francisco Board of Supervisors concludes its hearings and acts on the conforming amendments to the Master Plan and the Planning Code. The Port and the Commission agree to use their best efforts to conduct their staff and public processes as set forth in the schedule attached to this Agreement as Exhibit 1, and incorporated into this text by reference. The Port recognizes that the Commission schedule is dependent on the Port and City schedule; if the Port or City processes, including environmental review, take longer than the schedule anticipates, the Commission process will extend in a parallel manner.

3. Program. The Commission and the Port anticipate that, in order to develop and implement the Waterfront Planning Documents and insure consistency with the Commission Documents, the coordinated effort and hearing process described in paragraphs 1 and 2 above will include at least the following actions:

    A. Retention of a consultant to the Commission through financial assistance from the Port to assist in the performance of the tasks set forth in this

Agreement. The Commission will manage the consultant and, with the consultation of the Port, develop by February, 1996 a detailed scope of work for the consultant in order to insure that the consultant provides the services and products necessary to enable the Commission to carry out its obligations hereunder;

B. Clarification of the concepts of "maximum feasible public access" and "water-oriented uses" in the context of areas of the Port which lie within Commission jurisdiction, especially in connection with rehabilitation of the Port's piers.

C. A review of needed repairs on piers and classification of repairs which constitute substantial repair, and therefore are considered fill, repairs which are considered routine maintenance (or otherwise would be allowed) and repairs which would require consideration on a case-by-case basis, and to determine the resulting regulatory implications and public access requirements.

D. Development of proposed amendments to replacement fill policies to allow further flexibility in reconfiguration of piers, or to allow substantial repairs of piers and structures used for existing water-oriented commercial recreation uses, in a manner which promotes public access and development consistent with the McAteer Petris Act.

E. Determination of the nature and duration of interim uses, or incidental non-water-oriented uses, permitted on the Port's piers.

F. Development of a mechanism to allow rehabilitation of existing bulkhead buildings for existing and/or future non-water-oriented uses.

G. Streamline the processing of permit applications through coordination and, to the maximum feasible extent, combination of Port, City, and Commission processes.

H. Development of proposed amendments to the Special Area Plan to make it consistent with the Waterfront Planning Documents, and to eliminate the Total Design Plan by merging any relevant provisions in with the Special Area Plan.

I. Review of preliminary and other drafts of the EIR to ensure it will meet the environmental review needs for any of the modifications or amendments to BCDC's plans, policies and regulations.

The Commission and the Port recognize that these issues are interrelated, and that agreement and action on some of the issues may depend on agreement and action on other

issues.

The Commission and Port anticipate that the following actions will be necessary to address these issues:

Port adoption of the Waterfront Planning Documents
City adoption of conforming amendments to the Master plan and Planning Code and zoning map
Commission amendment of the San Francisco Bay Plan
Commission amendment of the San Francisco Waterfront Special Area Plan
Commission amendment of the San Francisco Waterfront Total Design Plan (to combine it with the Special Area Plan)
Commission amendment to the Commission regulations.

4. Public and Agency Participation. The Commission and the Port recognize the importance of the participation of the public and agencies with special expertise, and enter into this agreement in order to facilitate their input and involvement. Specifically, the Commission and the Port have entered into this coordinated process to create a unified forum for participation by concerned San Francisco public and civic organizations, for groups with special concerns related to the Bay such as the Save San Francisco Bay Association and the Bay Planning Coalition, and for agencies such as the State Lands Commission. The Port and Commission will jointly seek the assistance of these individuals, groups, and agencies.

5. The Executive Directors of the Commission and the Port are hereby authorized to execute this Agreement.

IN WITNESS WHEREOF, Commission and Port execute this memorandum of understanding at San Francisco, California as of the last date set forth below.

PORT:
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION

By _____
DENNIS P. BOUEY
Executive Director

Dated: _____

COMMISSION:

Bay Conservation and Development Commission

By_____
WILLIAM TRAVIS
Executive Director

Dated:_____

APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney

By: _____
Deputy City Attorney

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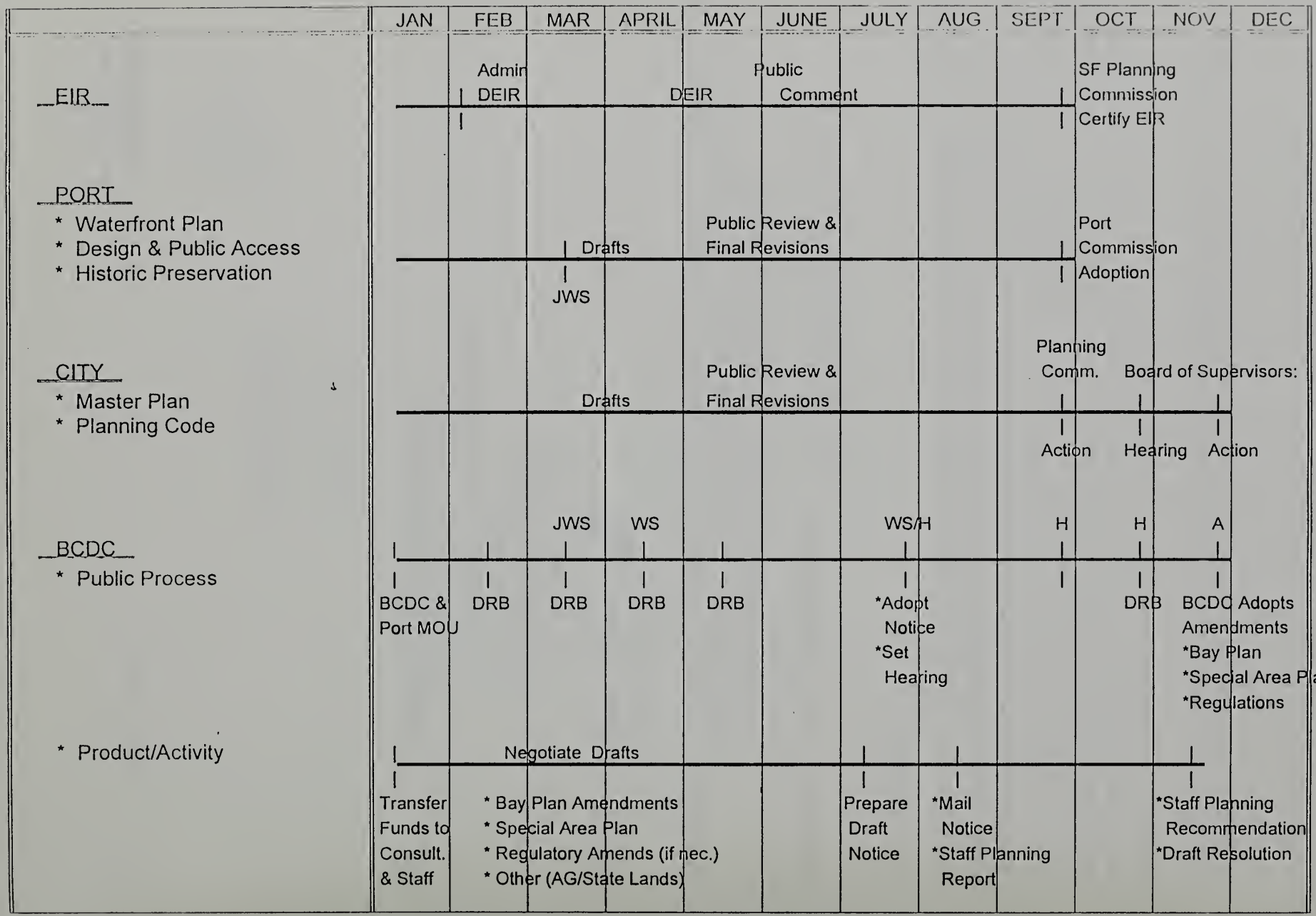
BCDC - PORT PLANNING PROCESS

1996



Code (for BCDC): JWS = Joint Workshop (Port/BCDC)
WS = Workshop
A = Action
H = Hearing
DRB = Design Review Board

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0523
Cable SFPORTCOMM
Writer

MEMORANDUM

January 2, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of percentage rental adjustments for Castagnola's, Fisherman's Grotto, Nick's Lighthouse, Sabella & LaTorre, Tarantino's, Cresci's Brothers, Franciscan Restaurant and Guardino's at Fisherman's Wharf.

DIRECTOR'S RECOMMENDATION: APPROVE PERCENTAGE RENTAL ADJUSTMENTS SET FORTH HEREIN

BACKGROUND

In 1970, the Port entered into eight 66-year leases with restaurants and retailers at Fisherman's Wharf, which are summarized on Exhibit A (the "Subject Leases"). Each of the Subject Leases provide for the payment of percentage rent to the Port, and they further provide for the review and adjustment in the rate of percentage rent every 25 years during the lease term. The first such 25-year anniversary date was May 1, 1995 (the "Effective Date"). Due to ongoing discussions with the tenants for the Subject Leases, the Port and the tenants agreed to extend the time for finalizing the adjustment in the rate of percentage rent. The Port and the tenants also agreed that the final rental adjustment would be retroactive to the Effective Date.

The Subject Leases currently set forth three categories for percentage rent: (1) "Food," (2) "Alcoholic Beverages and All Other Items Sold Through the Bar," and (3) "All Other Uses."

The current uses for the Subject Leases consist of full service restaurant uses, including outdoor stands on the sidewalk area of the leased premises, and retail uses. Full service restaurant uses are restaurant uses where food and beverages are ordered by and served to customers at their tables, and cooked to the customers' order, for consumption on the leased premises. Full service restaurant uses also include sales of seafood, seafood related items, and beverages from outdoor stands operated on the sidewalk area of the leased premises.

Each of the Subject Leases establishes a similar procedure for the review and adjustment of the rate of percentage rent. If the rates of percentage rent for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the adjustment date, then the Port shall adjust the rates of percentage rent for the Subject Leases accordingly. If the the tenant disagrees on the amount of the adjustment, then the tenant has the right to terminate the lease without liability for future rent.

ANALYSIS BY PORT STAFF

In order to determine the rate of percentage rent for like uses in the vicinity of the leased premises for the Subject Leases, the Port hired a consultant to perform a survey and analysis of the rates of percentage rent charged for like uses in the vicinity of the leased premises and to make recommendations regarding the appropriate adjustment in the percentage rental rates for the Subject Leases. Port staff also held several discussions with the tenants for the Subject Leases and their consultants, and considered their comments regarding the appropriate adjustment.

Port staff has concluded that the current rate of percentage rent in the vicinity of the leased premises for the Subject Leases is seven percent (7.0%) for food and alcoholic beverages sold at restaurants providing full table service, and nine percent (9.0%) for retail sales. However, the Subject Leases obligate the tenants to maintain the substructure and exterior of their properties, which is normally the obligation of the landlord. The leased premises for the Subject Leases are located over water, and these maintenance obligations therefore include the seawall and pilings, which are significant obligations. Port staff concluded that the percentage rental rates for the Subject Leases should be lower than the rates in the vicinity of the leased premises because of these maintenance obligations.

The Port also entered into six other leases for the following facilities whose percentage rental rates are also now subject to adjustment: Alioto's #8, Alioto Expo, Cory Galleries, Fish Alley Bar & Grill, Franceschi's, Pompei's Grotto, Sinbad's and Fog City Diner. Port staff, however, has not finalized its discussions with the tenants for these leases. Port staff will make recommendations regarding the adjustment in the percentage rental rates for these leases at a future Port Commission meeting, after discussions with the affected tenants have been completed.

STAFF RECOMMENDATION

Based upon the independent survey and analysis obtained from the Port's consultant, the input provided by the tenants and their consultants, and Port staff's own consideration and review of the data available to it, Port staff recommends that the rates of percentage rent for the Subject Leases be adjusted as follows:

Food, and Alcoholic Beverages and All Other Items Sold Through the Bar (including outdoor stands):	6.5% of gross receipts
All Other Uses:	8.5% of gross receipts

The recommendation of Port staff for percentage rental rates adjustments for each of the Subject Leases are indicated on the attached Exhibit B.

Prepared by: Frederick D. White, Director, Tenant and Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-03

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, certain Port leases identified in Exhibit A attached to the Memorandum regarding Agenda Item 5A for the January 9, 1996 Port Commission meeting ("Memorandum") provide for adjustment in the percentage rents based on the determination that the percentage rents for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the date of the determination; and now therefore be it

RESOLVED, that the Port Commission determines that the rates of percentage rent for full service restaurant and retails uses in San Francisco in the vicinity of the leased premises for the leases identified in Exhibit B attached to the Memorandum have increased to the rates indicated in Exhibit B; and be it further

RESOLVED, that the percentage rents for said leases shall be adjusted as indicated in Exhibit B; and be it further

RESOLVED, that the Executive Director or his designee is hereby authorized to execute all such appropriate documentation as needed to implement this Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 9, 1996

_____
Secretary

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EXHIBIT A
FISHERMAN'S WHARF SUBJECT LEASES
CURRENT PERCENTAGE RENTAL RATES

Port Lease No.	Location/ Business Name	Primary Type(s) of Business(es)	Current Percentage Rental Rates		
			Food	Beverage*	Other
L-7493	Castagnola's	Full Service Restaurant	5%	6.5%	6.5%
L-7498	Fisherman's Grotto	Full Service Restaurant	5%	6.5%	6.5%
L-7492	Nick's Lighthouse	Full Service Restaurant	5%	6.5%	6.5%
L-7499	Sabella & LaTorre	Full Service Restaurant	5%	6.5%	6.5%
L-7500	Tarantino's	Full Service Restaurant	5%	6.5%	6.5%
L-7494	Cresci Brother's	Full Service Restaurant	5%	6.5%	6.5%
L-7496	Franciscan Restaurant	Full Service Restaurant/Retail	5%	6.5% Crabstand 7%	6.5%
L-7497	Guardino's	Full Service Restaurant/Retail	5%	6.5%	6.5%

*Alcoholic beverages and all other items sold through the bar

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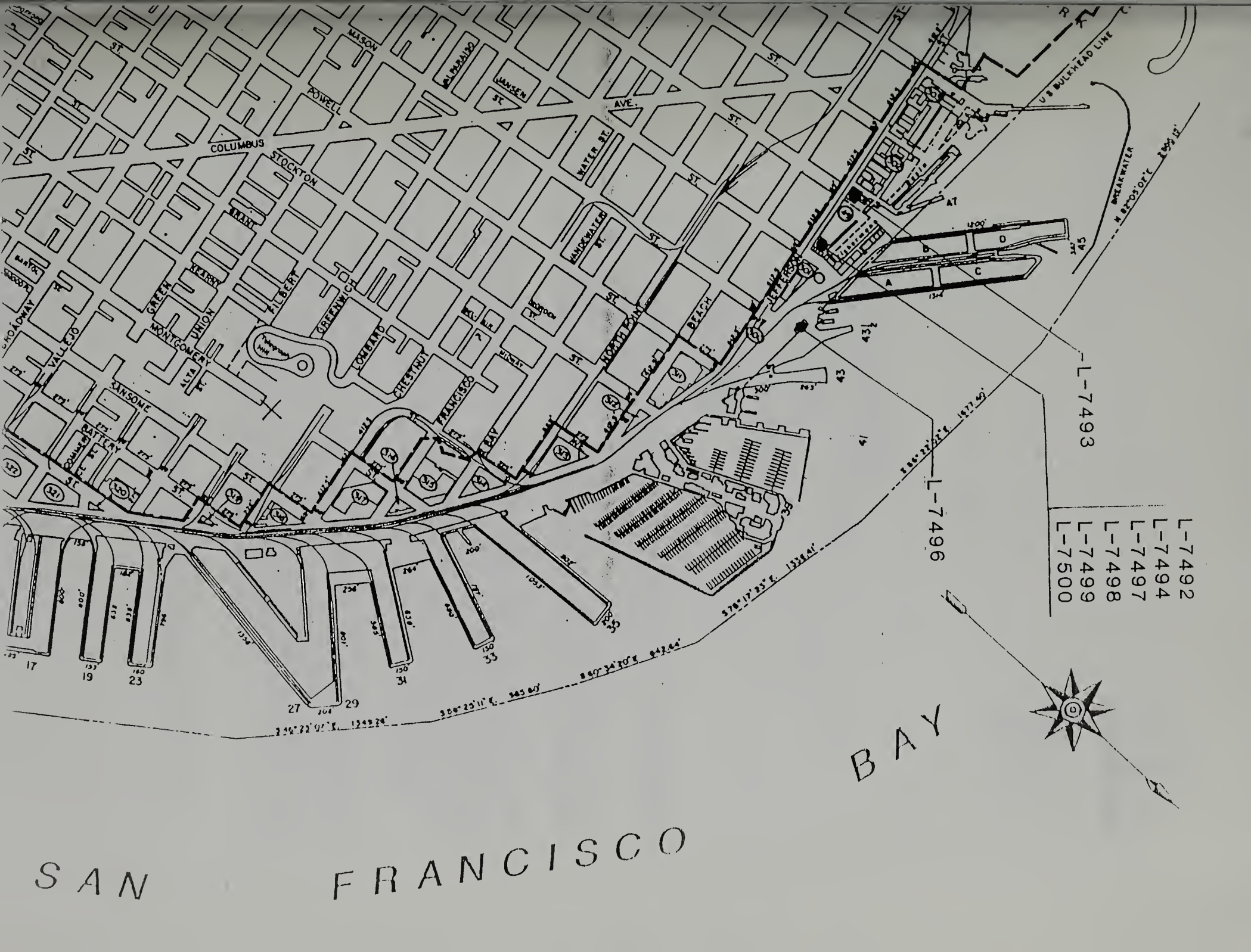
EXHIBIT B
FISHERMAN'S WHARF SUBJECT LEASES
PROPOSED PERCENTAGE RENTAL RATES

Port Lease No.	Business Name	Effective Date	Food	Alcoholic Beverages*	Other Uses
L-7493	Castagnola's	5/1/95	6.5%	6.5%	8.5%
L-7498	Fisherman's Grotto	5/1/95	6.5%	6.5%	8.5%
L-7492	Nick's Lighthouse	5/1/95	6.5%	6.5%	8.5%
L-7499	Sabella & LaTorre	5/1/95	6.5%	6.5%	8.5%
L-7500	Tarantino's	5/1/95	6.5%	6.5%	8.5%
L-7494	Cresci Brother's	5/1/95	6.5%	6.5%	8.5%
L-7496	Franciscan Restaurant	5/1/95	6.5%	6.5%	8.5%
L-7497	Guardino's	5/1/95	6.5%	6.5%	8.5%

* Alcoholic beverages and all other items sold through the bar.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PORT OF SAN FRANCISCO

Ferry Building
San Francisco CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

January 4, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval Of Eighteen Month Lease to Allright Cal., Inc. for Surface Parking Lot Operations at Embarcadero Median Lots E, F, and G

DIRECTOR'S RECOMMENDATION: AWARD LEASE BETWEEN PORT OF SAN FRANCISCO AND ALLRIGHT CAL., INC. FOR SURFACE PARKING LOT OPERATIONS.

At its June 27, 1995 meeting, the Port Commission adopted Resolution No. 95-58 which authorized Staff to solicit bids offering surface parking operations at the Embarcadero Median Lots E, F, and G, as shown on Attachment A. On October 10, 1995 the Port received four bids as outlined on Attachment B. The highest bidder was Allright Cal., Inc., dba Allright San Francisco (Allright). Staff has reviewed the financial statements and experience qualification forms, has verified the background of Allright, and has determined Allright to be a responsive bidder.

On October 11, 1995, the Port received a bid protest from the second highest bidder, San Francisco Parking, dba CityPark, which alleged that Allright should not be awarded the lease because Allright had not been complying with the prevailing wage provisions in leases for Port parking lots located at Front and Broadway (SWL 322i), Bryant and the Embarcadero (SWL 330), and Embarcadero Median Lots E, F, and G as shown on Attachment C. The Port provided Allright an opportunity to respond in writing to CityPark's protest.

THIS PRINT COVERS CALENDAR ITEM NO. 5B

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-04

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, on June 27, 1995, the Port Commission adopted Resolution No. 95-58 which authorized Staff to issue a bid package for an eighteen (18) month lease for surface parking lot operations at the Embarcadero Median Lots E, F, and G; and

WHEREAS, the Port received the highest bid for monthly rent of $30,166.67 from Allright Cal., Inc. ("Allright"); and

WHEREAS, Staff has determined that Allright is a responsive bidder; and

WHEREAS, San Francisco Parking, dba CityPark, the second highest bidder, filed a bid protest which alleged that Allright had not been complying with the prevailing wage provisions of its Port leases; and

WHEREAS, the Administrative Code allows the Commission discretion in consideration of prevailing wage violations when determining if a bidder is responsible:

WHEREAS, Allright has been an excellent tenant of the Port since January 1994; and Allright voluntarily corrected the deficiencies of its parking operations on Port property; and Allright has affirmed its intent to pay the correct prevailing wage rate at all Port locations in the future; now therefore be it

RESOLVED, that the Port Commission hereby approves the award of lease L-12177 dated December 13, 1995 to Allright Cal., Inc. for surface parking lot operations at Embarcadero Median Lots E, F and G, a copy of which is on file with the Commission Secretary according to the terms and conditions set forth in Agenda Summary Item No. 5B.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 9, 1996.

_____
Commission Secretary

i.wp51\parkmem2\DA\jef\January 4, 1996

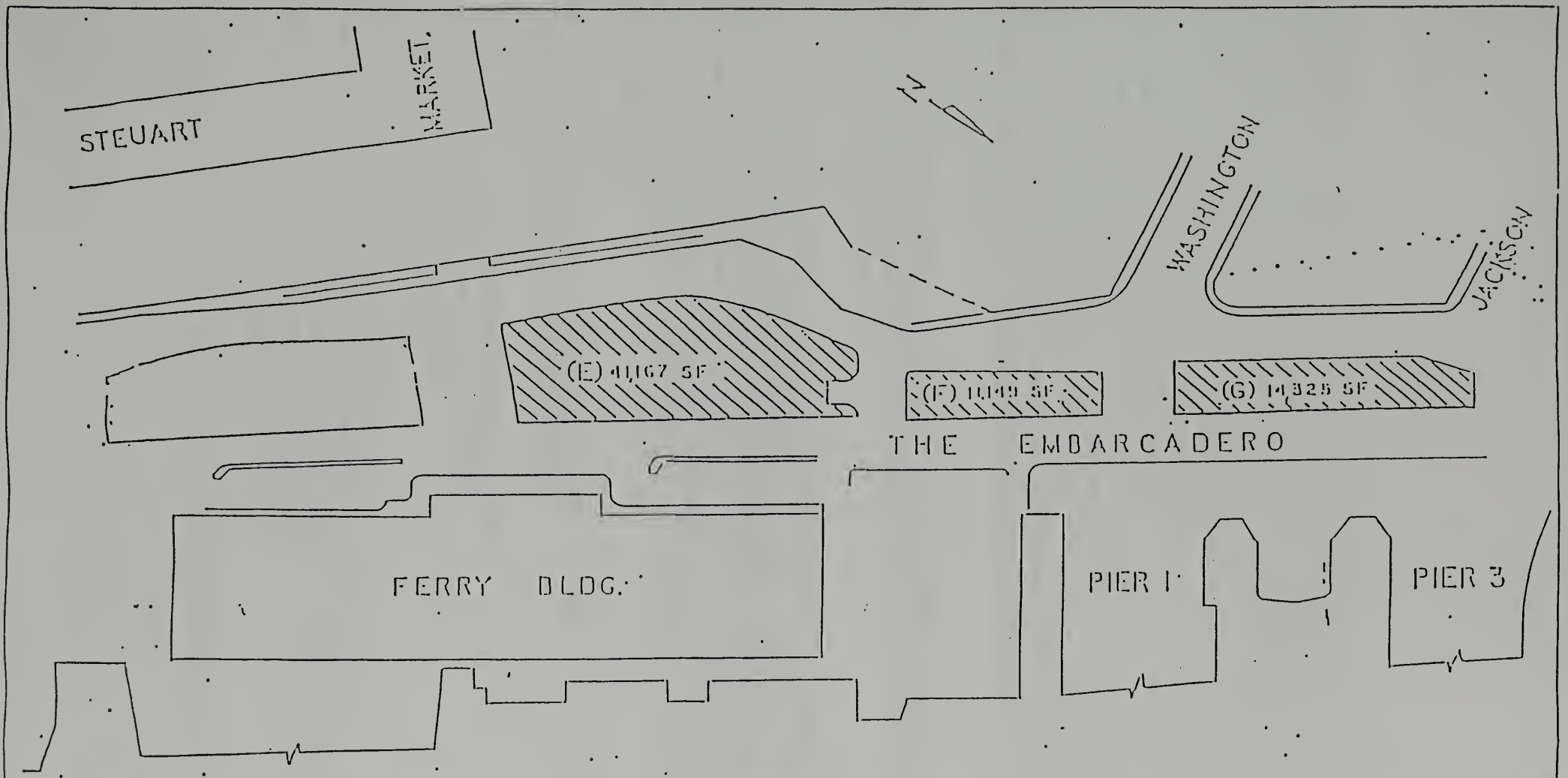


TABLE OF CHANGES
CHECK BOXES FOR LATEST REVISION

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE _____

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS

MAP 1
PARCEL NO.1
EMBARCADERO MEDIAN LOT#

4023-0-0000

ATTACHMENT A

The Board of Supervisors has determined that the highest general prevailing wage for parking lot employees is set forth in the master agreement between parking employers and the Teamster Automotive Employees Local Union No. 665 ("Teamster Agreement"). The Teamster Agreement provides two rates; one for State lots and another for all other lots. Allright submitted a certified payroll which indicated that Allright had not consistently paid prevailing wages in accordance with either rate set forth in the Teamster Agreement. Allright states that, during bargaining sessions it has had with Local 665, specific discussions occurred regarding varying rates based upon proximity to the Financial District as well as operational variations (attended lots versus self-serve lots). Based upon these discussions, and given that Port lots are located outside of the Financial District and are in close proximity to State lots, Allright concluded that the State rate should apply. While Allright failed to pay even the State rate to certain employees, Allright has made an effort to correct these deficiencies and has provided a certified payroll indicating that it has cured theses deficiencies through back payments at the State rate and modifications of its benefit package.

Allright has affirmed that it will comply with the prevailing wage provisions of the lease at the Embarcadero Median Lots should it receive the award. To ensure compliance, Staff will review Allright's certified payrolls on a periodic basis.

The Commission may consider prevailing wage violations in determining award of parking leases; the result of such consideration may include disqualification of the bidder. Given that 1) Allright has been a tenant in good standing since January of 1994, 2) Allright voluntarily corrected the deficiencies from past parking operations due to its misinterpretation of the Teamster Agreement, and 3) Allright has affirmed its intent to pay the correct prevailing wage rate and benefits at all Port locations in the future, Staff recommends that Allright not be disqualified from the bid for the Embarcadero Median Lots.

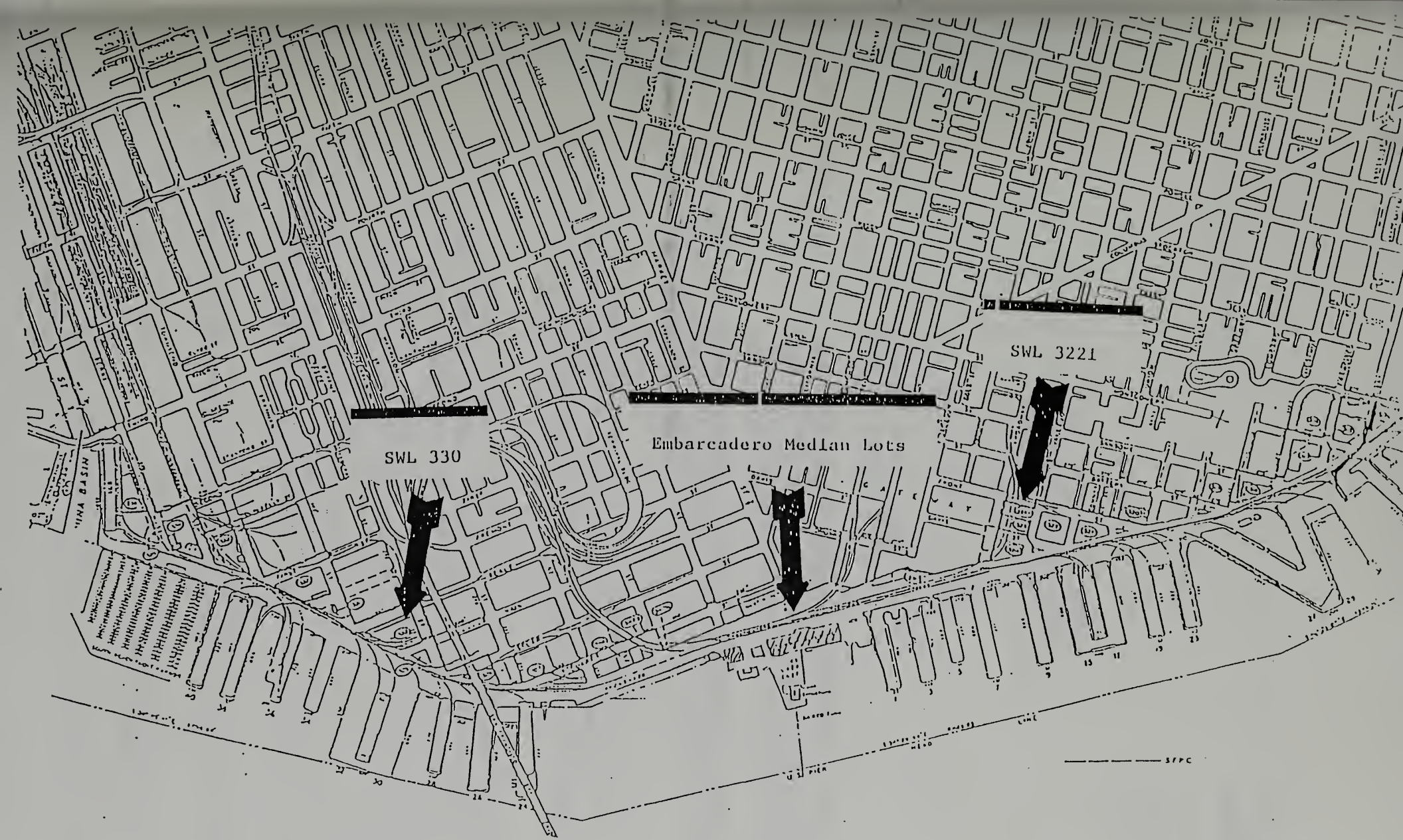
Staff is therefore recommending award of an eighteen month lease to Allright. The lease is of the standard Port format with business points structured as follows:

Premises:	Embarcadero Median Lots E, F, and G
Size:	66,641 square feet of paved land
Term:	Eighteen (18) months
Commencement:	February 1, 1996
Monthly Rent:	$30,166.67 ($ .45/square foot)
Temporary Recapture:	Port may recapture portions of the Premises for special intermittent uses, other than parking, with 2-weeks written notice.
Farmer's Market:	The lease provides for weekly recapture of Lot E to accommodate the Farmer's Market each Saturday.

Prepared by: Frederick D. White, Director, Tenant & Maritime Services

PARKING BID OPENING *October 10, 1995* *2:00 PM*		
Bid #	**Company**	**Bid Amount**
1	City Park	$28,025.00
2	ABC Parking Inc.	$20,111.11
3	Central Parking	$23,250.00
4	Allright California Inc.	$30,166.67
		Minimum Acceptable Bid: $20,000.00

ATTACHMENT B



ATTACHMENT C

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

December 29, 1995

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Landlord's Consent to Assignment of Parking Lease from JMC Associates to WCB Twenty-Eight Limited Partnership at Seawall Lot 328 located at Spear Street and the Embarcadero

DIRECTOR'S RECOMMENDATION: APPROVE LANDLORD'S CONSENT TO ASSIGNMENT OF PARKING LEASE FROM JMC ASSOCIATES TO WCB TWENTY-EIGHT LIMITED PARTNERSHIP

JMC Associates Limited Partnership ("JMC") is a Tenant under Port Lease No. L-10814 for Premises containing 26,793 square feet of land located at Seawall Lot 328. The Lease has a forty year term ending in 2024. The Premises is being used as a support parking lot for an office building located at One Harrison Street.

As part of a large portfolio transaction, One Harrison Street is being sold to WCB Twenty-Eight Limited Partnership. A condition of the transfer is that the Port consent to an assignment of the Parking Lease from JMC to WCB Twenty-Eight Limited Partnership ("WCB"), a wholly owned affiliate of a partnership with a substantial capital base, and that JMC be released of all of its obligations under the Lease. The rent currently being paid to the Port for the Premises is $.47 per square foot per month and considered to be above market for paved land. JMC has requested that the Port attorn to and accept performance by WCB subject to the delivery to Port of an assumption agreement signed by WCB, in which WCB assumes the duties and obligations of JMC under the Lease.

Staff recommends approval of the assignment of Parking Lease, as described above, to WCB Twenty-Eight Limited Partnership, in a form approved by the City Attorney.

Prepared by: Frederick D. White
Director, Tenant & Maritime Services

THIS PRINT COVERS CALENDAR ITEM NO. 5C

CITY AND COUNTY OF SAN FRANCISCO

PORT COMMISSION

RESOLUTION NO. 96-05

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.58(g) leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Port's Tenant, JMC Associates Limited Partnership ("JMC"), desires to assign all of its right, title and interest in Port Lease No. L-10814 for Premises containing 26,793 square feet of paved land located at Seawall Lot 328 to WCB Twenty-Eight Limited Partnership ("WCB"); and

WHEREAS, the terms of the Parking Lease require Port consent to the assignment of Parking Lease; and

WHEREAS, upon assignment of the Parking Lease to WCB, JMC desires to be fully released from all of its obligations under the Lease; now, therefore, be it

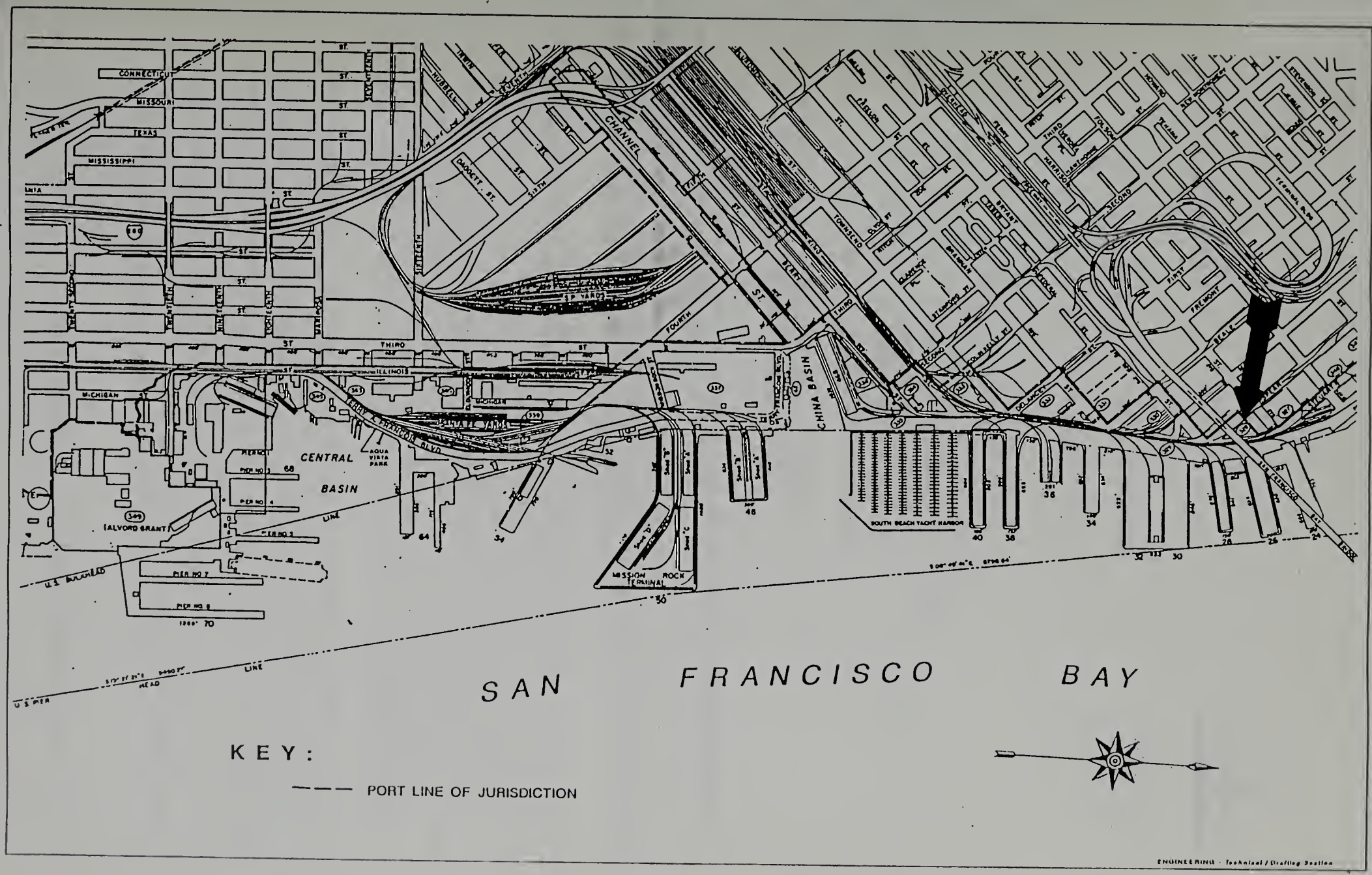
RESOLVED, that the San Francisco Port Commission hereby approves the assignment of parking lease from JMC to WCB, and the release of JMC under the Lease, subject to the express assumption by WCB of all obligations and liabilities under the Lease, and hereby authorizes the Executive Director of the Port to execute a Consent to Assignment of Parking Lease on behalf of the Port in such form as approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 9, 1996.

_____

Secretary

SOUTHERN WATERFRONT



KEY:

——— PORT LINE OF JURISDICTION

ENGINEERING - Technical / Drafting Section

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

December 29, 1995

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of month-to-month rent policy for commercial fishing gear storage

DIRECTOR'S RECOMMENDATION: APPROVE MONTH-TO-MONTH RENT POLICY FOR COMMERCIAL FISHING GEAR STORAGE

An important need for commercial fishing boats berthed at Fisherman's Wharf is the availability of convenient and inexpensive storage space for their fishing gear. This storage need primarily involves nets and crab pots, which are stored during the off seasons. The Port previously provided such storage in Shed D of Pier 45, but this storage was displaced to Pier 26 during the Port's renovation project at Pier 45. With the completion of this project, the Port intends to restore this fishing gear storage space to 14,379 square feet in Shed D of Pier 45, as shown on the attached site plan.

Based upon a survey of the commercial fishing fleet berthed at Fisherman's Wharf, it is anticipated that this space in Shed D will meet most of the storage needs of the commercial fishing boats, although some additional storage space may need to be provided in sheds located elsewhere on Port property. This survey also indicated that the rent for this commercial storage space needs to be reduced to less than the rental rates currently being charged for such storage ($.20 per sq. ft. pursuant to Port Commission Resolution 94-113) and to substantially less than the rates established by the Port leasing parameters for shed space ($.30-$45 per sq. ft.).

THIS PRINT COVERS CALENDAR ITEM NO. 5D

This survey further indicated that the standard insurance requirements are excessive for such passive storage usage and that such insurance coverage is prohibitively expensive due to the small size of the individual storage spaces. The City Risk Manager concurred with these conclusions, and recommended that the insurance requirements for tenants of these storage spaces be confined to comprehensive or commercial general liability insurance, with combined single limits of not less than $300,000.

Port staff, therefore, recommends that the Port Commission authorize the Executive Director or his designee to execute new month-to-month agreements for fishing gear storage in shed space at a minimum monthly rental rate of $.10 per square foot, with the insurance requirements being limited to the insurance coverage indicated above. This rental rate policy will only apply to fishing boats berthed at Fisherman's Wharf.

Prepared by: Frederick D. White
Director, Tenant & Maritime Services

CITY AND COUNTY OF SAN FRANCISCO

PORT COMMISSION

RESOLUTION NO. 96-06

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, in order to support and expand the fishing industry at Fisherman's Wharf, it is necessary to provide inexpensively priced shed space to store fishing gear for commercial fishing boats berthed at Fisherman's Wharf; now, therefore, be it

RESOLVED, that the Port Commission authorizes the Executive Director to or his designee to execute month-to-month leases for commercial fishing gear storage in shed space at a monthly rental rate of $.10 per square foot, with insurance requirements confined to comprehensive and commercial general liability insurance with combined single limits of not less than $300,000.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 9, 1996.

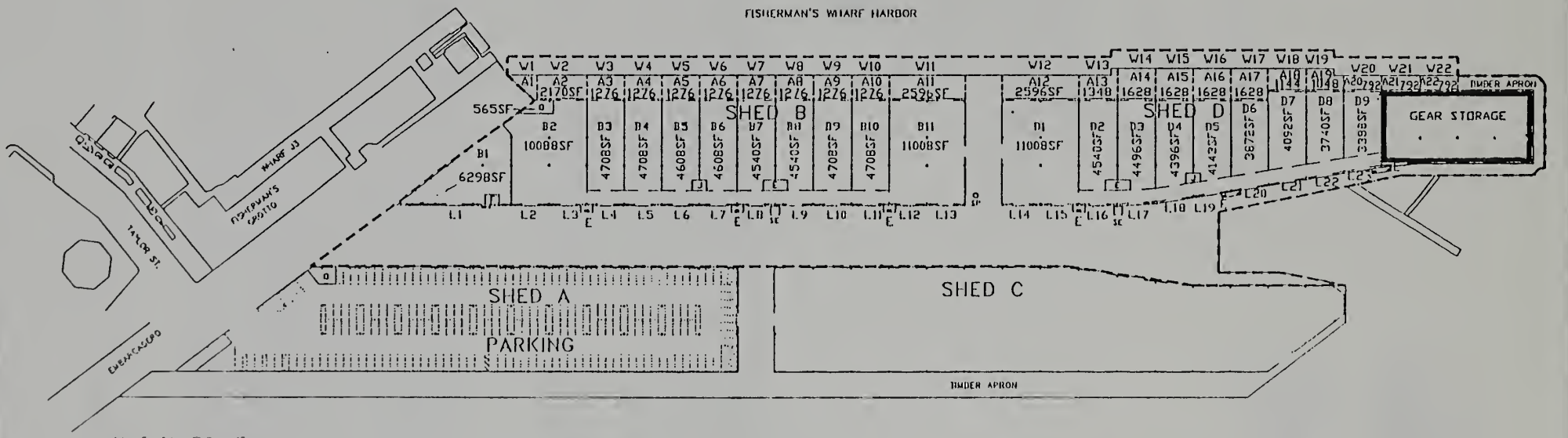
_____

Secretary

KEY:

A – APRON
B – INTERIOR PREMISES
E – ENTRANCE LANDING WITH STAIRS
F – FIRE PUMP ROOM
J – JANITOR
L – LOADING DOCK
O – OFFICE
SE – ELECTRICAL SUBSTATION
SP – SEWER PUMPSTATION
W – WATER

FACILITY – – – – – – –



SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO		SEAFOOD CENTER PIER 45, SHED B and SHED D	FACILITY No. 1045 LEASE No. DATE:

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

January 3, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Professional Services Contract No. SA 3920019, "Asbestos Abatement Oversight and Consultation Services," with Galson Corporation, approval to authorize the execution of the remaining segment of Phase 3 of the original contract, for the consulting services for asbestos abatement of the new boiler room, vent shaft, cooling tower and shear wall areas of the Ferry Building

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO INITIATE THE REMAINING SEGMENT OF PHASE 3 OF CONTRACT NO. 3920019 WITH GALSON CORPORATION FOR $30,000

On May 27, 1992, the Commission approved the award of the professional services contract for asbestos abatement oversight consultant services to Galson Corporation. The contract's scope of services was divided into four phases: Phase I, Phase 2, Phase 3 and Phase 4 for work on the Ferry Building/World Trade Center and for Pier 70, Building 111. All phases were not initiated at the time of award because all funds were not then available. On August 9, 1994, the Commission approved the award of Phase 2 work for the consultant to perform asbestos abatement services for the Pier 70, Building 111 earthquake repair and mitigation project. The Downtown Ferry Terminal Project requires that the Ferry Building boiler room/utility area be relocated along with other associated work and the Ferry Building Stage 2 work requires that new shear walls be constructed. The contract documents for these

THIS PRINT COVERS CALENDAR ITEM NO. 6A

two projects must be finalized and the consultant must be available for construction management assistance during the construction phase of both projects. To accommodate these projects, on November 21, 1994, the Commission approved the award of a portion of Phase 3 work for the consultant to assess the asbestos conditions of the existing Ferry Building boiler room.

The original scope of services were as follows:

Phase 1
Prepare specifications and oversee the asbestos abatement work required by the repair of earthquake damage to the Ferry Building/World Trade Center.

Phase 2
Prepare specifications and oversee the asbestos abatement work required by the repair of earthquake damage to Building 111, Pier 70.

Phase 3
Prepare specifications and provide abatement oversight services for asbestos abatement work at the Ferry Building/World Trade center.

Phase 4
Prepare as-needed specifications and provide oversight services for ongoing abatement activity, including emergencies such as steam pipe leaks, asbestos spills, and damage to TSI or fireproofing.

The remaining portion of Phase 3 Ferry Building asbestos abatement services includes consultation work for installation of a new boiler in a new location of the building, installation of a new vent shaft through the second and third floors and roof and installation of a cooling tower on the roof as part of the Downtown Ferry Terminal Project. The services will include consultation work for the construction of new shear walls as part of the Ferry Building Stage 2 project. These services will include preparation of contract documents for the construction contract and assistance to Port staff during the construction of both the Downtown Ferry Terminal Project and the Ferry Building Stage 2 project. Funds are now available for these additional services under Phase 3. The cost of this work is $30,000. The project cost is as follows:

Phase 1, Ferry Building/World Trade Center:	$98,500
Phase 2, Pier 70, Building 111:	35,810
Phase 3, Existing Ferry Building Boiler:	3,000
Phase 3(continued), As described herein:	30,000
Total cost to date:	$167,310

Prepared by: Emilio R. Cruz
Director of Facilities and Operations

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO.96-07

WHEREAS, the Commission previously approved the award of the professional services contract for asbestos abatement oversight consultant services to Galson Corporation; and

WHEREAS, the contract's scope of services was divided into four phases: Phase 1, Phase 2, Phase 3 and Phase 4; and

WHEREAS, previously, phases of work have been awarded as funds become available; and

WHEREAS, the Downtown Ferry Terminal Project requires that the boiler room/utility area be relocated and the Ferry Building Stage 2 project requires the construction of new shear walls; and

WHEREAS, the remaining portion of Phase 3 Ferry Building asbestos abatement services includes consultation work for installation of a new boiler in a new location of the building, installation of a new vent shaft through the second and third floors and roof and installation of a cooling tower on the roof as part of the Downtown Ferry Terminal Project; and the services will include consultation work for the construction of new shear walls as part of the Ferry Building Stage 2 project; and

WHEREAS, these services will include preparation of contract documents for the construction contract and assistance to Port staff during the construction of both the Downtown Ferry Terminal Project and the Ferry Building Stage 2 project.

WHEREAS, the cost of the consultation services including finalizing the contract documents and construction management assistance to the Port during construction is $30,000; and

WHEREAS, these funds are now available; now therefore be it

RESOLVED, that the Commission hereby authorizes staff to initiate the remaining portion of Phase 3 of Contract SA 3920019 to Galson Corporation for $30,000 for Phase 3 Ferry Building asbestos abatement services which includes consultation work for installation of a new boiler in a new location of the building, installation of a new vent shaft through the second and third floors and roof and installation of a cooling tower on the roof as part of the Downtown Ferry Terminal Project and for consultation work for the construction of new shear walls as part of the Ferry Building Stage 2 project.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 9, 1996.

_____
Secretary

agd-gals.cj

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

January 3, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Construction Contract No. 2608, "Piers 3, 29 and 31 Cornice Repairs", authorization to issue a Type 2 contract modification

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO ISSUE A TYPE 2 MODIFICATION FOR $35,000

The Port Commission authorized the award of Construction Contract No. 2608 to Chiang C. M. Construction Inc. at the regular meeting of July 7, 1995. This contract is for earthquake damage repair of buildings at Piers 3, 29 and 31. The contract was awarded for $292,829 with a $30,000 contingency for possible Type I contract modifications. After work began, it was discovered that more damaged plaster needs to be replaced than the original contract plans indicated. Port staff has negotiated with the contractor to perform this work for $65,000. Port staff is currently negotiating with FEMA and OES to fund this additional cost. Staff recommends that the Commission approve a Type 2 Modification for $35,000 to allow the contractor to proceed with the work without further delay.

Prepared by: Emilio R. Cruz
Director of Facilities and Operations

THIS PRINT COVERS CALENDAR ITEM NO. 6B

agd-2608.cj

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **96-08**

WHEREAS, the Commission authorized the award of construction Contract No. 2608 to Chiang C. M. Construction Inc. for $292,829; and

WHEREAS, the Commission further authorized up to $30,000 in funds for possible Type 1 contract modifications; and

WHEREAS, after work began, it was discovered that more damaged plaster needs to be replaced than the original plans indicated; and

WHEREAS, Port staff has negotiated with the contractor to perform this work for $65,000: and

WHEREAS, Port staff is currently negotiating with FEMA and OES to fund this additional cost; and

RESOLVED, that the San Francisco Port Commission hereby approves a Type 2 contract modification for $35,000 for Contract No. 2608, "Piers 3, 29 and 31 Cornice Repairs", with Chiang C. M. Construction Inc., to allow for additional plaster work to be performed at this time and secure the buildings from further weather damage.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 9, 1996.

_____
Secretary

agd-2608.cj

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

January 3, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Professional Services Contract No. SA 3930045 , "Downtown Ferry Terminal, Phase II", Roma Design Group, Project Status Update

On June 22, 1994, the Commission recommended that Port Staff proceed with development of the preferred alternate, conceptual design scheme and layout for the Pier ½ North Ferry Terminal Upgrade, Phase II Project, now called the Downtown Ferry Terminal Project. On November 8, 1994, the Commission authorized Port Staff to proceed with Amendment No. 1. for the design of the Breakwater and the Boiler Relocation. The Phase II design including the Boiler Relocation is nearing 100% completion. The Breakwater design will be 100% complete by April 1, 1996.

The development of the Downtown Ferry Terminal Project will achieve the following three basic objectives:

1. *Increase the berthing capacity in and around the Ferry Building, accommodating existing and proposed ferry service demand, and existing and potential routing and berthing requirements.* Also, ferry service shall be provided on decks which shall remain functional after a major seismic event.

THIS PRINT COVERS CALENDAR ITEM NO. 6C

agd-down.jr

2. *Design the project in the most cost-effective manner, while providing continuous ferry service during construction and allowing for future growth and expansion.* The design team defined the North and South Basin, each flanking an edge of the existing Ferry Plaza. The North Basin includes a new terminal which will provide service to Vallejo, Tiburon and other North Bay destinations, and includes a berthing area for an excursion boat operator in the future. The South Basin includes a new terminal for service to Alameda, Oakland, and Harbor Bay, and provides space for future hovercraft service to the Airport and non-commute service to Treasure Island or Golden Gate Fields. The Breakwater will project into the Bay approximately 80' south of the foot of Mission Street and will protect the South Basin.

3. *Provide better pedestrian access through the Ferry Building and between the ferry terminal facilities.* The project includes removing and relocating the Boiler Room, renovating the existing 20' wide east promenade of the Ferry Building, constructing a new 20' wide promenade to provide access between the two basins along the east side of the Ferry Building, and providing pedestrian weather protection. Also, the project calls for a new east-west breakthrough under the tower, providing pedestrian access along the Market Street axis through the Ferry Building and to the waterfront and the ferry terminals. The provision of public access along the east side of the Ferry Building will require all freight service to the Building be provided from the Ferry Plaza via hand carts to the existing freight elevators.

The Port is currently working on all necessary environmental clearances and permitting for the project. The Commission will recall the project requires environmental certification under both NEPA and CEQA, and permits from the San Francisco Bay Conservation and Development Commission, the US Army Corp of Engineers, the Regional Water Quality Control Board (dredging), the Environmental Protection Agency (dredging), and California Department of Fish and Game (dredging). Environmental certification for the project is scheduled to be complete in July 1996. All necessary permits cannot be secured until a certified environmental document is issued. Permits for the project will be obtained in the Fall 1996.

The Port currently has $7,900,000 in project construction funds. The cost of the entire project is estimated at approximately $14,000,000. The Port is actively pursuing additional grant funds to reduce the budget shortfall. To build a project that is within current budget, but that maintains maximum flexibility in the event that the Port secures additional grant funds, the Port has structured the project bid package to include the following items:

* *BASE BID* *Estimated Cost: $7,000,000*

a. South Terminal

1. Demolish existing deck, bridge and segment of pier alongside Sinbad's Restaurant.
2. Provide new barge, ramp and gangway with associated guide piles, and required dredging.

3. Provide new "essential structure" deck with topping slab.
4. Provide portals, lights, and railing.

b. South Arcade
1. Demolish existing asphalt in arcade.
2. Provide topping slab in arcade.
3. Replace light fixtures in the South Arcade.
4. Provide pigeon control netting on the ceiling of the South Arcade.

c. Breakthrough and Boiler Room
1. Establish a new boiler room between column lines 19 and 20 and C and D.
2. Provide one hot water boiler and one steam boiler and ventilate through the roof. Relocate the existing chiller and provide a new roof-mounted cooling tower.
3. Demolish the existing boiler room enclosure and the existing equipment that will not be reused.
4. Provide a pedestrian passageway under the tower through the Ferry Building.

d. East Promenade
1. Demolish the existing deck and piers of the boiler room deck and truck turning platform.
2. Build a new 20' wide "essential structure" deck from the southern end of the existing east promenade south to the Ferry Plaza.
3. Add a new topping slab to the existing deck on the east promenade of the Ferry Building to conform to the new construction, and provide new lights, benches, and railings along the entire east promenade.

e. Miscellaneous Items
1. Provide signage for the public.
2. Mobilization/construction staging is included.
3. Construction continency after bid is included.

* *BID ALTERNATE NO. 1 Estimated Cost: $2,200,000*

a. North Deck
1. Demolish a 60' wide strip of the existing Pier ½ deck adjacent to the Ferry Building.

2. Construct a new 24' wide north "essential structure" deck adjacent to the north end of the Ferry Building.
3. Relocate the existing Pier ½ float, ramp and gangway to connect to the new north deck. Provide new guide piles and dredge the area as required.
4. Provide portals, lights and railing around the new north deck.
5. Provide railing along the new Pier ½ edge.

* *BID ALTERNATE NO. 2 Estimated Cost: $200,000*

a. Passenger Weather Protection
   1. Provide new canopy along the east promenade between the Ferry Plaza and the north edge of the Ferry Building.

* *BID ALTERNATE NO. 3 Estimated Cost: $350,000*
   1. Provide new canopy over the south terminal hinged gangway with wind screens.
   2. Provide new canopy over the publicly accessible portions of the south terminal float.

* *BID ALTERNATE NO. 4 Estimated Cost: $4,800,000*

a. Breakwater
   1. Construct a breakwater south of the Agriculture Building extending eastward from the Embarcadero seawall approximately 600' and then northward to the eastern edge of the Ferry Plaza.

Depending on the available construction monies, the Port can award the construction contract comprising the Base Bid and any combination of Bid Alternates. The Port is actively pursuing an additional $8,500,000 in grant monies from various governmental programs including the State Transportation Program under ISTEA.

This item is for information only and staff will come back to the Commission for approval to advertise.

Prepared by: Emilio R. Cruz
Director of Facilities and Operations

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

December 29, 1995

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director DPB

SUBJECT: Approval of Port staff representative to attend the American Association of Port Property Management and Pricing Seminar in San Diego, California

DIRECTOR'S RECOMMENDATION: APPROVE ATTACHED RESOLUTION

On January 17-19, 1996, the American Association of Port Authorities is conducting a Port Property Management and Pricing Seminar in San Diego, California. This program will address a number of key property management, utilization and pricing issues currently confronting ports.

Attendance at this seminar by a representative of the Port's Tenant & Maritime Services Division will enhance the marketing, leasing and management of Port property. Port Commission approval is therefore sought for one representative of the Port's Tenant and Maritime Services Division to travel to this seminar and represent the Port of San Francisco. This request is in accordance to the Port's Fiscal Year 1995/96 budget.

Prepared by: Frederick D. White
Director, Tenant & Maritime Services

THIS PRINT COVERS CALENDAR ITEM NO. 9A

CITY AND COUNTY OF SAN FRANCISCO

PORT COMMISSION

RESOLUTION NO. 96-09

WHEREAS, the Executive Director is requesting authorization for one Port representative to travel to San Diego, California, for the American Association of Port Authorities Port Management and Pricing Seminar to be held on January 17-19, 1996; and

WHEREAS, attendance at this seminar will enhance the marketing, leasing and management of Port properties; and

WHEREAS, the cost of this trip is included in the Port Commission's Fiscal Year 1995-1996 budget; now, therefore, be it

RESOLVED, that the Port Commission hereby approves this travel request.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 9, 1996.

_____

Secretary

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

December 29, 1995

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of travel for one Port representative to attend meetings in Seattle, Washington on December 10-11, 1995 related to reforms of Federal laws governing the cruise industry, in accordance with the Port's Fiscal Year 1995-1996 budget.

DIRECTOR'S RECOMMENDATION: APPROVE ATTACHED RESOLUTION

On December 10-11, 1995, West Coast port representatives will meet in Seattle Washington to discuss legislative issues related to reforming existing cruise law which prevents San Francisco from attracting cruises between California ports and other West Coast destinations. These legislative efforts are integral to the Port's long term marketing strategy to develop new cruise business for the Port of San Francisco. The total cost for this trip is $386. This expenditure is in accordance with the Port Commission's Fiscal Year 1995/96 budget.

Prepared by: Veronica Sanchez, Manager
Governmental Affairs

THIS PRINT COVERS CALENDAR ITEM NO. 9B

CITY AND COUNTY OF SAN FRANCISCO

PORT COMMISSION

RESOLUTION NO. 96-10

WHEREAS, the Executive Director is requesting authorization for one Port representative to travel to Seattle, Washington, to attend meetings to discuss legislative issues related to reforming existing cruise law which prevents San Francisco from attracting cruises between California ports and other West Coast destinations; and

WHEREAS, the cost of this trip has been included in the Port Commission's Fiscal Year 1995-1996 budget; now, therefore, be it

RESOLVED, that the Port Commission hereby approves this travel request.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 9, 1996.

_____

Secretary

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
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Writer

MEMORANDUM

December 29, 1995

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director DPB

SUBJECT: Approval of Lease with the State of California Fifth District Agricultural Association (the "San Francisco Fair") at the Pier 27 Administration Building (The Embarcadero at Lombard Street)

DIRECTOR'S RECOMMENDATION: APPROVE LEASE WITH THE STATE OF CALIFORNIA FIFTH DISTRICT AGRICULTURAL ASSOCIATION

The State of California Fifth District Agricultural Association operates the "County Fair" of the City and County of San Francisco under the auspices of the "San Francisco Fair" and desires to lease 740 square feet of second floor office space at the Pier 27 Administration Building to replace its offices in the now closed State of California Office Building. The Port and the prospective tenant have negotiated a lease (Lease No. 12214) within the standard leasing parameters with terms as follows:

Premises:	740 square feet of second floor office space at the Pier 27 Administration Building (the Embarcadero at Lombard Street)
Term:	Month to Month
Rent:	$666.00 per month
Rental Rate:	$.90 per square foot per month
Rent Adjustment:	Annual CPI increases

Commission approval is required because the prospective tenant has requested a revision of the indemnity and exculpation language in the lease (Sections 20.1 and 20.2) so as to be consistent with the State of California's legal ability to indemnify and exculpate second parties. The proposed language was previously used in a Port Permit with the San Francisco Fair covering the recently conducted carnival on Pier 30-32.

The proposed modification excludes from the Tenant's indemnification responsibilities the negligent acts of the Port.

THIS PRINT COVERS CALENDAR ITEM NO. 9C

The existing language is as follows:

"**20.1 Indemnity**. Tenant shall indemnify and hold Port, City and their agents, officers, directors, contractors and employees (collectively "Agents") harmless from, and, if requested, shall defend them against any and all claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any injury to or death of * any person, including employees of Tenant, or damage to or destruction of any property occurring in, on or about the Premises, or any part thereof, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, or (c) the use, occupancy or condition of the Premises or the activities therein by Tenant, its Agents', or clients', customers', invitees', guests', members', licensees', assignees' and subtenants' (collectively "Invitees") activities therein. This indemnity shall be enforceable regardless of the negligence of Port or City, and regardless of whether liability without fault is imposed or sought to be imposed on Port or City. This indemnity shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Lease. This indemnity includes all such loss, damage injury, liability or claims as described above, loss predicated in whole or in part, upon active or passive negligence of Port, City or their Agents. This indemnity shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of Port or City which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Tenant, its Agents or Invitees.

In addition to Tenant's obligation to indemnify Port and City, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Port and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by Port and/or City and shall continue at all times thereafter.

The foregoing indemnity obligation of Tenant shall include without limitation, indemnification from all loss and liability, including attorney's fees, court costs and all other litigation expenses. This indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of this section shall survive the termination of this Lease with respect to any damage, destruction, injury or death occurring prior to such termination.

20.2 Exculpation. Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against Port, City and their Agents, and agrees to hold Port, City and their Agents harmless from any claims for damage to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about said Premises for any cause arising at any time, including without limitation all claims arising from the joint or concurrent negligence of Port or City or their Agents, but excluding any intentionally harmful acts committed solely by Port or City."

*Language affected by modification.

The proposed lease language is as follows:

"Section 20.1 (Indemnity) of the Lease is hereby amended to read in its entirety as follows:

"20.1 Indemnity. Licensee shall indemnify and hold Port, City and their Agents, officers, directors, contractors and employees (collectively, "Agents") harmless from, and, if requested, shall defend them against any and all claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of the use of the Premises or ** the activities therein by Tenant, its Agents', or clients', customers', invitees', guests', members', licensees' and assignees' (collectively "Invitees") activities therein. This indemnification shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Lease. This indemnity shall exclude claims, liability, damage or loss resulting exclusively from the negligence or willful misconduct of Port or City.

In addition to Tenant's obligation to indemnity Port and City, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Port and City from any claim which actually or potentially falls within its indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by Port and/or City and shall continue at all times thereafter.

The foregoing indemnity obligation of Tenant shall include without limitation, indemnification from all loss and liability, including attorney's fees, court costs and all other litigation expenses. This indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of this section shall survive the termination of this Lease with respect to any damage, destruction, injury or death occurring prior to such termination."

Section 20.2 (Exculpation) of the Lease is hereby amended to read in its entirety as follows:

"20.2 Exculpation. Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against Port, City and their Agents, and agrees to hold Port, City and their Agents harmless from any claims for damages to Tenants' goods, ware, goodwill, merchandise, equipment, business opportunities in, upon or about the Premises, but excluding claims resulting from any intentionally harmful acts committed solely by Port or City."

Staff recommends that the lease be approved with the revised indemnity clause.

**Modified language

Prepared by: Frederick D. White
Director, Tenant & Maritime Services

CITY AND COUNTY OF SAN FRANCISCO

PORT COMMISSION

RESOLUTION NO. 96-11

WHEREAS, Charter Section 3.581 grants to the San Francisco Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, the State of California Fifth District Agricultural Association has proposed to lease 740 square feet of office space at the Pier 27 Administration Building; and

WHEREAS, the State of California Fifth District Agricultural Association has requested a modification of the indemnity and exculpation clauses of the Port's standard lease so as to be consistent with the State of California's legal ability to indemnify and exculpate; and

WHEREAS, staff has negotiated a mutually acceptable revision of the Port's standard indemnity and exculpation clauses consistent with the request of the State of California Fifth District Agricultural Association's request; and

WHEREAS, the Port Commission has determined that for the reasons set forth in the Memorandum for Agenda Item 9C of the January 9, 1996 Commission meeting; to approve the revised indemnity and exculpation clauses; now, therefore, be it

RESOLVED, that the San Francisco Port Commission hereby approves entering into a lease between the Port and the State of California Fifth District Agricultural Association on the terms and conditions of the proposed lease as outlined in the Memorandum for Agenda Item 9C for the January 9, 1996 Port Commission meeting.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 9, 1996.

_____

Secretary

SF
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PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

MINUTES OF THE MEETING
JANUARY 9, 1996

DOCUMENTS DEPT.

JAN 26 1996

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1. **ROLL CALL**

The meeting was called to order by Commission President Preston Cook at 4:05 p.m. The following Commissioners were present: Preston Cook, Frankie Lee, Anne Halsted, Francis O'Neill and Michael Hardeman.

2. **APPROVAL OF MINUTES** - November 14, 1995

ACTION: Commissioner Halsted moved approval; Commissioner Hardeman seconded the motion. All Commissioners were in favor. The minutes of the meeting were adopted.

3. **EXECUTIVE**

A. Election of Port Commission Officers - at the request of the chair, this item was moved to be heard after Item 10.

B. Executive Director's Report

Mr. Bouey reported the following:

1) Mayor Brown has requested that any action on leases before the Commission today be carried over to the following meeting so that he would have the opportunity to familiarize himself about these leases and communicate with the Commission. Accordingly, Items 5A, 5B and 5C will be carried forward to the next Commission meeting.

2) Waterfront Plan EIR: As the Commission is aware, staff had hoped that the draft EIR would be completed by the end of January. The draft plan will be delayed to the middle of April or conceivably as long as the middle of May. The reasons for the delay are threefold: (1) A regional traffic analysis has not been completed and needs to be done. (2) Since the adoption of the draft waterfront plan, several permits have been filed for major projects, most notably the Rincon Hill arena and the Giants ballpark. The Planning staff and our consultant, ESA, need additional time to consider these impacts. (3) As the Commission knows, staff is working on master plan amendments and zoning code changes to ensure that the City's master plan and zoning is consistent with the waterfront plan. These amendments and changes need greater detail to ensure that they mesh with the waterfront plan.

The final EIR was expected to be adopted by the end of September. Staff is hopeful that it can make up the time lost on the draft and experience a delay of about one month on the entire EIR process. Staff is shooting for the end of October or early November to have the Waterfront Plan EIR completed. This forecasted schedule is contingent upon the amount of comments received during the public comment period and the quality of those comments.

2) Combined Charities - The Port was successful in increasing Citywide participation by about 22%, although we essentially raised the same amount of money as last year ($375,000 this year vs. last year's $378,000).

3) New Year's Eve Party - the party was successful; there were approximately 14,000 people in attendance.

4) Inauguration Party - the party at Pier 45 went very smoothly; there were approximately 50,000 to 100,000 people in attendance.

In response to Commissioner O'Neill's inquiry regarding artifacts mentioned in the Bechtel Briefs, Mr. Bouey responded that Emilio Cruz made some inquiries and found that during the period of construction, the federal government has custody of the artifacts. The Port is now working on who will have custody after construction but is concerned about what responsibilities or liabilities may be attached to that ownership. Before the Port asserts any ownership claims, it wants to make sure what the responsibilities and liabilities are.

4. SPECIAL ITEM

A. Agreement between the Bay Conservation and Development Commission and Port to develop and process amendments to BCDC's plans as necessary to implement the Waterfront Land Use Plan. (Resolution No. 96-02)

Mr. Bouey stated that the Port made a decision to have a very public process in developing the Waterfront Plan and convened a 27- member waterfront advisory board. That advisory board made a decision to develop a waterfront plan that was best for the waterfront; realizing in some instances that it would not conform to the City's Zoning Code, Master Plan or to BCDC regulations. As a consequence, staff is working with different agencies including the Planning Department, State Land Trust and BCDC to work out those differences. Historically, the Port and BCDC have had a bit of arm's length relationship but are now beyond that and are optimistic to work out most differences between those land use objectives inconsistent with BCDC's plan and regulations. Staff met with BCDC's Executive Director Will Travis and Bob Tufts to find a mechanism on how to best work out these differences. An MOU is proposed by both parties which sets a schedule to reconcile the plan in consistent with BCDC regulations. What's unique about this schedule is that it is predicated upon certain elements that the Port and the Planning Department must accomplish. BCDC staff, therefore, will not expend resources unnecessarily. As well, since BCDC is in a financial crunch, the Port has agreed, as part of this MOU, the expenditure of $49,000 for consultants to assist BCDC in working out these differences. About mid-way through the process, a workshop with both commissions will be held to review the progress to date. It is important to note that everything may not be accomplished but it's more important to make those gains that are possible. BCDC is very supportive of this plan. This is a step in the right direction. He then acknowledged Mr. Travis' presence and asked for his comments.

Mr. Travis shared Mr. Bouey's enthusiasm on this venture and the whole new change in the posture of the two organizations. They look forward to a series of policies, a plan that is embraced by the Port and by BCDC and that incorporates the State Lands Commission's concerns. They're also excited about the process of both commissions working together. They have also been working closely with the Bay Planning Coalition and Save San Francisco Bay Association. Mr. Travis suggested, that at the advice of their attorney, he must make minor refinements to the MOU. They intend to take this to their commission for approval next Thursday. He heartily endorses this and asked for the Commission's approval.

Commissioner Cook commented that the Commission looks forward to working with Mr. Travis and BCDC to make things a little bit simpler.

In response to Commissioner O'Neill's inquiry of the consultant's fee, Mr. Bouey concurred that it is a not-to-exceed figure but there are no guarantees, as the vagaries of the issues may require staff to come back to the Commission. Commissioner Halsted commented that this is an exciting process.

ACTION: Commissioner Halsted moved approval; Commissioner O'Neill seconded the motion. All Commissioners were in favor; the resolution was adopted.

5. TENANT & MARITIME SERVICES

Since a considerable number of speakers were present to comment on Items 5A and 5B, Commissioner Cook opened the floor for public comment and added that these items will be heard at the next meeting.

A. Approval of percentage rental adjustments for Castagnola's, Fisherman's Grotto, Nick's Lighthouse, Sabella & LaTorre, Tarantino's, Cresci's Brothers, Franciscan Restaurant and Guardino's at Fisherman's Wharf. (Resolution No. 96-03)

Jim Reuben stated that he would defer his comments to the next meeting.

B. Approval of Eighteen-Month Lease to Allright Cal., Inc. for Surface Parking Lot Operations at Embarcadero Median Lots E, F, and G. (Resolution No. 96-04)

Tim Leonaudakis, City Park, spoke in opposition to the award of the parking contract to Allright. Their position is that the Port established a very clear ground rules with respect to the Allright parcels. It called for a strict requirement for prevailing wage and benefit. Allright does not and has not been paying prevailing wage at a facility they currently operate at the Port and should be restricted from bidding and from being awarded this contract.

Richard Dane, Vice President for Allright Parking, spoke on behalf of Allright and stated that they will be present at the next meeting to dispute Mr. Leonaudakis's claims and prove their case.

C. Approval of Landlord's Consent to Assignment of Parking Lease from JMC Associates to WCB Twenty-Eight Limited Partnership at Seawall Lot 328 located at Spear Street and the Embarcadero. (Resolution No. 96-05)

D. Approval of month-to-month rent policy for commercial fishing gear storage. (Resolution No. 96-06)

Mr. Bouey stated that shortly after his appointment to the Port, he held a series of meetings with representatives of the fishing industry to find those issues that Port staff could work on to support the industry. They developed a list of items such as purchase ice at less expensive rates and in smaller quantities, the ability to get fuel over the weekend at a less expensive cost and get to the fueling site at times other than high tide. Port staff have been able to work successfully on a number of these issues and continue to work on others such as parking. Today, the issue of equipment storage is being addressed . This item is before the Commission because rental parameters require that when the Port rents space below market rates, Commission's approval is required. It is important that the Port do everything it can to support the fishing industry to ensure that it stays vibrant and is able to grow and by providing low cost equipment storage to our fleet is supportive of that goal. He further stated that this is a month-

to-month policy as there may be a need in the future to relocate the site and at the same time, if the Port loses a fishing berth tenant, it retain the right to terminate the equipment storage. This special rate is only available to Port's tenants.

Mr. Robert Miller, Vice President of the Crabboat Owners Association, urged the Commission to adopt the resolution. They appreciate the Commission's actions. On his behalf and the other members and non-members of the association, with the Commission's actions over the last couple of years, the attitude now is more of a partnership between the Port Commission and the fishing fleet. He added that Mr. Bouey has been a very active, positive force. He got together with he and his fellow fishermen and instead of telling them what the Port is going to do, the Port wanted to know what they needed. They appreciate staff's attitude and action taken. Look forward to better things. They feel like partners at fisherman's wharf. Thanked staff, in particular, Kirk Bennet and Elliot Riley.

ACTION: Commissioner O'Neill moved approval; Commissioner Lee seconded the motion. All Commissioners were in favor; the resolution was adopted.

6. FACILITIES & OPERATIONS

A. Professional Services Contract No. SA 3920019, "Asbestos Abatement Oversight and Consultation Services," with Galson Corporation, approval to authorize the execution of the remaining segment of Phase 3 of the original contract, for the consulting services for asbestos abatement of the new boiler room, vent shaft, cooling tower and shear wall areas of the Ferry Building for $30,000. (Resolution No. 96-07)

Mr. Bouey stated that the Port Commission has previously approved this contract which consists of four phases. Phases 1 and 2 have been completed. The first part of Phase 3 is completed; staff previously indicated that it would come back to the Commission when they received monies from FEMA to continue the remaining segment of Phase 3 work. FEMA has now allocated those monies.

Commissioner Cook asked for clarification of the scope of work. Mr. Bouey responded that this contract is for the design and specification services for the removal of asbestos. Mr. Cruz stated that the estimate total project cost for removal is $350,000 which will be done by a certified asbestos contractor and the design work to be done by a certified asbestos consultant. The locations of asbestos have been identified; staff has to come up with specifications that can be bid upon for the actual removal. Commissioner Cook reiterated that this work is for preparing the specifications to determine the amount that the bids would come in. Mr. Cruz responded to the affirmative and added that this would also generate an estimate. Mr. Cruz explained that this is a more complex process in that the Port is trying to get FEMA funding. If the Port were to use its own funds, it would simply RFP for design services and turn that into a bid package for a contractor. Commissioner Cook asked if Phases 1, 2,3 & 4 were specified by FEMA to get this work done. Mr. Cruz concurred. Commissioner Cook asked if FEMA requests us to go to a discovery process before going out to bid. Mr. Cruz concurred and added that the FEMA won't agree to a finite number until they know the exact scope of work. They will agree to a small number until we can provide them enough justification to agree to a larger number. Commissioner Cook asked if FEMA is paying for the discovery process. Mr. Cruz concurred.

ACTION: Commissioner Hardeman moved approval; Commissioner Lee seconded the motion. All Commissioners were in favor; the resolution was adopted.

B. Authorization to issue a Type 2 Modification for $35,000 to Chiang C.M. Construction, Inc. for Contract No. 2608, "Piers 3, 29, 31, Cornice Repair." (Resolution No. 96-08)

Mr. Bouey stated that this is an issue of finding more damage than originally anticipated. We are negotiating with FEMA for the other $65,000. It is our hope to get the FEMA money, if not, staff has identified other Port funds to be used.

ACTION: Commissioner Lee moved approval; Commissioner O'Neill seconded the motion. All Commissioners were in favor; the resolution was adopted.

C. Informational Briefing: Professional Services Contract No. SA 3930045, "Downtown Ferry Terminal Project, Phase II," Roma Design Group, Project Status Update.

Mr. Bouey stated that this was an appropriate time to update the Commission on the progress of the downtown ferry terminal project. Emilio Cruz will make the presentation and to assist him is Boris Dramov, whose firm is the chief designer of the project. He added that he has some comments to make at the conclusion of their presentation.

Mr. Cruz gave the Commissioners a copy of the 90% cost estimate for the downtown ferry terminal project. He exhibited the schematic of the ferry building area. The bid for the overall project is $6.95 million. The contract will involve, among other things, relocating the boiler system at the ground level of the building, opening the center of the building for passage. Models were provided to depict various points including the east terminal and the access way. They then gave an overview of the different alternatives being considered.

Commissioner Cook inquired about any studies or surveys done to determine the usefulness of the canopy. He personally felt the canopy is expensive and more importantly, it blocks the view. Mr. Boris Dramov responded that the canopy is an item very strongly promoted by the operators because their ridership falls off significantly during the winter time. It is not as high a priority as getting the additional capacity built in this area for the ferry operations.

In response to Commissioner O'Neill's inquiry of accommodation on the south breakwater for pleasure boaters, Mr. Dramov replied that the breakwater location will be adequate to accommodate at least two additional berths. There can also be a visitor dock along the side of the breakwater. There is, however, a little bit of conflict between recreational boats coming into an operating ferry terminal. In reply to Commissioner O'Neill's inquiry of the cost to tie up pleasure boats and if there were any State funds available, Mr. Dramov replied that he did not have the estimate but will provide him the figure. As for the State funds, they are usually a loan given against a future berthing revenue.

In response to Commissioner Halsted's inquiry of public access to the breakwater, Mr. Dramov replied to the affirmative. He further commented that the downtown ferry terminal in addition to providing additional berthing capacity and essential structures to allow this area to operate both during and after major seismic event, the entire public access of the area will be changed with people being able to walk all the way around the ferry building as well as through the building, along the promenade and the breakwater.

In response to Commissioner Lee's inquiry concerning inclusion of the entryway in the final design, Mr. Dramov replied that the ferry terminal project will follow the shear wall project. The major effort of this project is to create a good entry point directly underneath the tower. Another aspect that enhances ferry ridership is the feeling of welcomeness and environmental quality. Quite a bit of effort is spent on creating a good entry point through the building where the shear walls are being added.

Mr. Bouey also addressed Commissioner Lee's inquiry. In the memorandum previously sent to the Commission, staff indicated that the proposed locations of the boiler is not the first choice of the developers. As it turns out, staff is locating it right next to the shear wall and

that's most likely where it will be situated. As well, staff will build some shear walls in front of the building, which developers will frown upon. From our standpoint, we made a decision and recommended to the Commission not to proceed with that work as it would not be prudent. Mr. Bouey indicated that before moving ahead with the project, a number of decisions still have to be made. Mr. Bouey, however, has grave reservations about moving ahead with the construction of any berths on the south side until the breakwater is built. Mr. Bouey, Mr. Cruz and Mr. Dramov will meet to review the issues.

Commissioner Hardeman was impressed and complimented the firm in keeping with the architectural spirit of the building. Commissioner Halsted echoed the same compliments. She also requested for a briefing regarding ferry service around the bay. Mr. Bouey stated that the ferry service briefing will take place at the Commission meeting following the next, in which there will be a presentation on the Port's marketing efforts.

Mr. Maletic inquired about plans for any arches. Mr. Dramov replied that there are no plans at this time with regard to the downtown ferry terminal project.

7. PLANNING & DEVELOPMENT

8. ADMINISTRATION

9. CONSENT CALENDAR

A. Approval of Port staff representative to attend the American Association of Port Authorities Port Property Management and Pricing Seminar in San Diego on January 17-19, 1996, in accordance with the Port's Fiscal Year 1995-1996 budget. (Resolution No. 96-09)

B. Approval of travel for one Port representative to attend meetings in Seattle, Washington on December 10-11, 1995 related to reforms of Federal laws governing the cruise industry, in accordance with the Port's Fiscal Year 1995-1996 budget. (Resolution No. 96-10)

C. Approval of month-to-month lease with the State of California Fifth District Agricultural Association at the Pier 27 Administration Building located on the Embarcadero at Lombard Street. (Resolution No. 96-11)

ACTION: Commissioner O'Neill moved approval; Commissioner Lee seconded the motion. All Commissioners were in favor; the resolution was adopted.

10. NEW BUSINESS / PUBLIC COMMENT

Mr. Bob Tibbits made the following comments:

1. Was pleased to see that the BCDC agreement passed, however, members of the Waterfront Advisory Board did not receive copies of the BCDC agreement, as promised in the past.

2. PG&E is supplying power to an ice machine on Port property. Doesn't the Port buy its electricity to Hetch Hetchy directly and why does the Port not get a competitive bid?

3. A 15-year old tree being removed at the Waterfront Gift Shop at 165 Jefferson Street. Would like to know what's happening.

4. The Planning Commission adopted a resolution amending Section 260 of the planning code to allow a height exemption for open air amusement structures in C2 districts. In looking at the

files, there was no formal signature on the application of the conditional use authorization nor a formal signature or a letter whereby the Port requested the changes.

Mr. Bouey commented that this item will eventually come before the Commission.

ELECTION OF PORT COMMISSION OFFICERS

Commissioner Cook remarked about his last two years as President of the Commission. He stated that it has been a wonderful experience. He thanked his fellow commissioners for their support. He thanked Mr. Bouey for being an excellent Executive Director. He added that for the 20 years he has observed the Port and familiarized himself with the Port's activities, Dennis has been, in his opinion, the best Executive Director. He mentioned the memorandum circulated to the new Mayor, a briefing paper about different issues facing the Port. In reviewing the document, he was pleased with Dennis and staff's excellent job. He was honored to be a part of it. However, he added that challenges still remain in the future as well as a lot of hard work. He thanked staff for putting forth extra effort and their dedication to the Port in the last few years.

He commented that, quite often, it's difficult to be in the public sector because of comments or criticisms by the public. He understands the difficulties of dealing with those issues and/or people on some occasions. However, it has been a wonderful experience and one that will be long remembered. He hopes that we would be mindful of the new Mayor and its new administration and be supportive. He hopes that there won't be a strong change in future agenda as he believes we are in the right path of what needs to be done at the Port. Most San Franciscans have been very supportive of Willie Brown as an assemblyman. He is a person who has vision, and a person who would like to get things done. It would be a pleasure working with him in the next couple of years.

He then asked for a motion for President of the Commission.

ACTION: Commissioner O'Neill nominated Commissioner Hardeman for President. Commissioner Lee seconded the motion. All Commissioners were in favor.

ACTION: Commissioner Halsted nominated Commissioner Lee for Vice President. Commissioner O'Neill seconded the motion. All Commissioners were in favor.

Commissioner Hardeman commented that he looks forward to working with the new administration. He echoed Commissioner Cook's comments that the Port is functioning great and will work as hard as he can to continue the process. Commissioner Lee appreciates the hard work of the staff. With Dennis Bouey's excellent leadership, the Port is moving in the right direction but we still have a lot of work ahead of us.

11. EXECUTIVE SESSION

At 5:20 p.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following matters:

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - ***This session is closed to any non-Port representative.***

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: James Lazarus, Director-Special Projects
AES Representative: Mark Woodruff

Under Negotiation: ____ Price ____ Terms of Payment __✓__ Both

An executive session has been calendared to discuss real property negotiations between the Port and AES, a California corporation, regarding Cogeneration Plant. This is specifically authorized under California Government Code Section 54956.8.

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION AND ANTICIPATED LITIGATION MATTERS

(1) Kenealey v. CCSF, et.al; CCSF v. PG&E, et.al.
San Francisco Superior Court No. 949-476

(2) George v. CCSF, et.al
San Francisco Superior Court No. 963-764

(3) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

(a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

Commissioners Cook, Lee, Halsted, O'Neill and Hardeman returned from executive session and convened in public session at 6:30 p.m.

ACTION: Commissioner Lee moved approval to not disclose any information discussed in the executive session; Commissioner Cook seconded the motion. All Commissioners were in favor.

The meeting was adjourned at 6:32 p.m.

P55
#1
1/23/96

SAN FRANCISCO PORT COMMISSION

REGULAR MEETING
4:00 P.M., TUESDAY, JANUARY 23, 1996
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CALIFORNIA

AGENDA

DOCUMENTS DEPT.

JAN 19 1996

SAN FRANCISCO
PUBLIC LIBRARY

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - January 9, 1996

3. **EXECUTIVE**

   A. Executive Director's Report

   B. Presentation by Marketing Manager Carolyn Macmillan regarding Port's Marketing efforts with emphasis on filming and special events.

4. **SPECIAL ITEM**

   A. Presentation of the proposed ballpark by San Francisco Giants Executive Vice President, Larry Baer.

5. **TENANT & MARITIME SERVICES**

   A. Approval of percentage rental adjustments for Castagnola's, Fisherman's Grotto, Nick's Lighthouse, Sabella & LaTorre, Tarantino's, Cresci's Brothers, Franciscan Restaurant and Guardino's at Fisherman's Wharf. (Resolution No. 96-03)

   B. Approval of Reaffirmation and First Amendment to Lease and Consent to Encumbrance with Bundox, Inc., dba the Waterfront Restaurant, at Pier 7-½ (Resolution No. 96-15)

   C. Approval of Landlord's Consent to Assignment of Parking Lease from JMC Associates to WCB Twenty-Eight Limited Partnership at Seawall Lot 328 located at Spear Street and the Embarcadero. (Resolution No. 96-05)

6. **FACILITIES & OPERATIONS**

7. **PLANNING & DEVELOPMENT**

   A. Approval of Contract Amendment for Environmental Science Associates, Inc. (Resolution No. 96-12) and Letter Agreement Amendment with the Planning

Department for preparation of an Environmental Impact Report for the Waterfront Land Use Plan. (Resolution No. 96-13)

8. ADMINISTRATION

9. CONSENT CALENDAR

A. Approval of one year lease with Foss Maritime at Pier 29. (Resolution No. 96-14)

10. NEW BUSINESS / PUBLIC COMMENT

11. EXECUTIVE SESSION

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - ***This session is closed to any non-Port representative.***

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: Dennis P. Bouey, Executive Director
AES Representative: Mark Woodruff

Under Negotiation: ____ Price ____ Terms of Payment __✓__ Both

An executive session has been calendared to discuss real property negotiations between the Port and AES, a California corporation, regarding Cogeneration Plant. This is specifically authorized under California Government Code Section 54956.8.

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION AND ANTICIPATED LITIGATION MATTERS

(1) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

(a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

(2) Discussion of significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case).

The City Attorney is of the opinion that based on existing facts and circumstances, discussion of existing litigation and anticipated litigation matters in open session would prejudice the legal position of the Port. An executive session is specifically authorized under California Government Code Section 54956.9(a)(b).

C. Vote in open session on whether to disclose Executive Session discussions (S.F. Admin. Code Sec. 67.14)

12. ADJOURNMENT

Public comment is permitted on any matter within Port jurisdiction, and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary.

DISABILITY ACCESS

The Port Commission office is located on the third floor of the Ferry Building, Suite 3100.

The Port office is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) will be available. The closest accessible BART station is Embarcadero Station located at Market and Steuart Streets. The closest accessible MUNI Metro station is Embarcadero station located at Market and Spear Streets. Accessible MUNI lines serving the Ferry Building are the 9, 31, 32 and 71. For more information about MUNI accessible services, call 923-6142.

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The following services are available on request 72 hours prior to the meeting. Please contact Frank Palumbo at (415) 274-0559. Late requests will be honored if possible.

- American Sign Language Interpreters
- The use of a reader during the meeting
- A Sound Enhancement System
- Minutes of the Meeting in Alternative Formats
- Large Print of the Agenda

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

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Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at 554-6075.

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

January 16, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of percentage rental adjustments for Castagnola's, Fisherman's Grotto, Nick's Lighthouse, Sabella & LaTorre, Tarantino's, Cresci's Brothers, Franciscan Restaurant and Guardino's at Fisherman's Wharf.

DIRECTOR'S RECOMMENDATION: APPROVE PERCENTAGE RENTAL ADJUSTMENTS SET FORTH HEREIN

BACKGROUND

In 1970, the Port entered into eight 66-year leases with restaurants and retailers at Fisherman's Wharf, which are summarized on Exhibit A (the "Subject Leases"). Each of the Subject Leases provide for the payment of percentage rent to the Port, and they further provide for the review and adjustment in the rate of percentage rent every 25 years during the lease term. The first such 25-year anniversary date was May 1, 1995 (the "Effective Date"). Due to ongoing discussions with the tenants for the Subject Leases, the Port and the tenants agreed to extend the time for finalizing the adjustment in the rate of percentage rent. The Port and the tenants also agreed that the final rental adjustment would be retroactive to the Effective Date.

The Subject Leases currently set forth three categories for percentage rent: (1) "Food," (2) "Alcoholic Beverages and All Other Items Sold Through the Bar," and (3) "All Other Uses."

THIS PRINT COVERS CALENDAR ITEM NO. 5A

The current uses for the Subject Leases consist of full service restaurant uses, including outdoor stands on the sidewalk area of the leased premises, and retail uses. Full service restaurant uses are restaurant uses where food and beverages are ordered by and served to customers at their tables, and cooked to the customers' order, for consumption on the leased premises. Full service restaurant uses also include sales of seafood, seafood related items, and beverages from outdoor stands operated on the sidewalk area of the leased premises.

Each of the Subject Leases establishes a similar procedure for the review and adjustment of the rate of percentage rent. If the rates of percentage rent for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the adjustment date, then the Port shall adjust the rates of percentage rent for the Subject Leases accordingly. If the tenant disagrees on the amount of the adjustment, then the tenant has the right to terminate the lease without liability for future rent.

ANALYSIS BY PORT STAFF

In order to determine the rate of percentage rent for like uses in the vicinity of the leased premises for the Subject Leases, the Port hired a consultant to perform a survey and analysis of the rates of percentage rent charged for like uses in the vicinity of the leased premises and to make recommendations regarding the appropriate adjustment in the percentage rental rates for the Subject Leases. Port staff also held several discussions with the tenants for the Subject Leases and their consultants, and considered their comments regarding the appropriate adjustment.

Port staff has concluded that the current rate of percentage rent in the vicinity of the leased premises for the Subject Leases is seven percent (7.0%) for food and alcoholic beverages sold at restaurants providing full table service, and nine percent (9.0%) for retail sales. However, the Subject Leases obligate the tenants to maintain the substructure and exterior of their properties, which is normally the obligation of the landlord. The leased premises for the Subject Leases are located over water, and these maintenance obligations therefore include the seawall and pilings, which are significant obligations. Port staff concluded that the percentage rental rates for the Subject Leases should be lower than the rates in the vicinity of the leased premises because of these maintenance obligations.

The Port also entered into six other leases for the following facilities whose percentage rental rates are also now subject to adjustment: Alioto's #8, Alioto Expo, Cory Galleries, Fish Alley Bar & Grill, Franceschi's, Pompei's Grotto, Sinbad's and Fog City Diner. Port staff, however, has not finalized its discussions with the tenants for these leases. Port staff will make recommendations regarding the adjustment in the percentage rental rates for these leases at a future Port Commission meeting, after discussions with the affected tenants have been completed.

STAFF RECOMMENDATION

Based upon the independent survey and analysis obtained from the Port's consultant, the input provided by the tenants and their consultants, and Port staff's own consideration and review of the data available to it, Port staff recommends that the rates of percentage rent for the Subject Leases be adjusted as follows:

Food, and Alcoholic Beverages and All Other Items Sold Through the Bar (including outdoor stands):	6.5% of gross receipts
All Other Uses:	8.5% of gross receipts

The recommendation of Port staff for percentage rental rates adjustments for each of the Subject Leases are indicated on the attached Exhibit B.

Prepared by: Frederick D. White
Director, Tenant and Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-03

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, certain Port leases identified in Exhibit A attached to the Memorandum regarding Agenda Item 5A for the January 23, 1996 Port Commission meeting ("Memorandum") provide for adjustment in the percentage rents based on the determination that the percentage rents for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the date of the determination; and now therefore be it

RESOLVED, that the Port Commission determines that the rates of percentage rent for full service restaurant and retails uses in San Francisco in the vicinity of the leased premises for the leases identified in Exhibit B attached to the Memorandum have increased to the rates indicated in Exhibit B; and be it further

RESOLVED, that the percentage rents for said leases shall be adjusted as indicated in Exhibit B; and be it further

RESOLVED, that the Executive Director or his designee is hereby authorized to execute all such appropriate documentation as needed to implement this Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 23, 1996

_____
Secretary

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EXHIBIT A
FISHERMAN'S WHARF SUBJECT LEASES
CURRENT PERCENTAGE RENTAL RATES

Port Lease No.	Location/ Business Name	Primary Type(s) of Business(es)	Current Percentage Rental Rates		
			Food	Beverage*	Other
L-7493	Castagnola's	Full Service Restaurant	5%	6.5%	6.5%
L-7498	Fisherman's Grotto	Full Service Restaurant	5%	6.5%	6.5%
L-7492	Nick's Lighthouse	Full Service Restaurant	5%	6.5%	6.5%
L-7499	Sabella & LaTorre	Full Service Restaurant	5%	6.5%	6.5%
L-7500	Tarantino's	Full Service Restaurant	5%	6.5%	6.5%
L-7494	Cresci Brother's	Full Service Restaurant	5%	6.5%	6.5%
L-7496	Franciscan Restaurant	Full Service Restaurant/Retail	5%	6.5% Crabstand 7%	6.5%
L-7497	Guardino's	Full Service Restaurant/Retail	5%	6.5%	6.5%

*Alcoholic beverages and all other items sold through the bar

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EXHIBIT B
FISHERMAN'S WHARF SUBJECT LEASES
PROPOSED PERCENTAGE RENTAL RATES

Port Lease No.	Business Name	Effective Date	Food	Alcoholic Beverages*	Other Uses
L-7493	Castagnola's	5/1/95	6.5%	6.5%	8.5%
L-7498	Fisherman's Grotto	5/1/95	6.5%	6.5%	8.5%
L-7492	Nick's Lighthouse	5/1/95	6.5%	6.5%	8.5%
L-7499	Sabella & LaTorre	5/1/95	6.5%	6.5%	8.5%
L-7500	Tarantino's	5/1/95	6.5%	6.5%	8.5%
L-7494	Cresci Brother's	5/1/95	6.5%	6.5%	8.5%
L-7496	Franciscan Restaurant	5/1/95	6.5%	6.5%	8.5%
L-7497	Guardino's	5/1/95	6.5%	6.5%	8.5%

* Alcoholic beverages and all other items sold through the bar.

L-7492
L-7494
L-7497
L-7498
L-7499
L-7500

L-7493

L-7496

SAN FRANCISCO BAY

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

January 16, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Preston Cook
Hon. Anne Halsted
Hon. Francis J. O'Neill

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Reaffirmation and First Amendment to Lease and Consent to Encumbrance with Bundox Restaurant, Inc., dba the Waterfront Restaurant, at Pier 7½

DIRECTOR'S RECOMMENDATION: APPROVE REAFFIRMATION AND FIRST AMENDMENT TO LEASE AND CONSENT TO ENCUMBRANCE WITH BUNDOX RESTAURANT, INC. dba THE WATERFRONT RESTAURANT, AT PIER 7 ½

I. BACKGROUND

Bundox Restaurant, Inc., a California corporation ("Bundox") leases from the Port that certain building and adjacent premises located at Pier 7 ½, commonly known as the Waterfront Restaurant, under the terms of (i) that certain Bundox Restaurant Lease No. L-8561, dated June 12, 1974, (ii) that certain Lease (referred to as Lease No. L-9800), dated February 1, 1978, by and between Port and the California Inland Pilots Association, which assigned its leasehold estate to Bundox pursuant to that certain Assignment and Amendment of Lease, dated January 7, 1988, and (iii) that certain Lease (referred to as Lease No. L-11485), dated August 1, 1989 (collectively, the "Prior Lease"). The term of the Prior Lease expired on March 31, 1995, and Bundox has been on a month-to-month tenancy since that time.

On October 25, 1994, by Resolution No. 94-133, the Port Commission approved Lease No. L-11859, a new twenty-year lease with Bundox. Lease L-11859, was approved by the Board of Supervisors on December 19, 1994, by Ordinance No. 412-94. The terms of the New Lease are summarized in the memorandum to Port Commission, dated October 5, 1994, a copy of which is attached hereto as Exhibit 1.

THIS PRINT COVERS CALENDAR ITEM NO. 5B

Section 2 of the New Lease provides that the New Lease shall commence and be effective on the "Commencement Date" which shall be the date on which the following, among other things, shall have occurred: (i) the procurement by Tenant of financing for Phase I of the Tenant Improvements at commercially reasonable terms; and (ii) the issuance of a Building Permit by Port allowing construction of Phase I of the Tenant Improvements. Section 2 of the New Lease further provided that if the aforementioned requirements are not satisfied on or before July 30, 1995, the New Lease shall not become effective and all terms and conditions stated therein shall become null and void.

Despite Bundox's efforts to satisfy the above-stated requirements, Bundox was unable to obtain financing at commercially reasonable terms, and therefore was unable to obtain a building permit from Port by July 30, 1995. Bundox believes that it is reasonable to expect that it will obtain financing at commercially reasonable terms and will obtain a Building Permit from Port by June 30, 1996. Bundox has already obtained a commitment from Bank of America and the Small Business Administration for construction and permanent financing, documented with three separate deeds of trust each securing a separate loan. The total amount of financing equals $3,315,250.00.

In order to revive the New Lease, which became void on June 30, 1995, the Port Commission and Board of Supervisors will need to reaffirm the New Lease. In addition, Bundox's lenders have requested certain amendments to the New Lease as a prerequisite to the financing, and have requested the Port's consent to encumbrance, substantially in the form of the Reaffirmation and Amendment to Lease and Consent to Encumbrance attached hereto. Relevant provisions of that agreement are summarized as follows:

- **Extension of Prior Lease**. The term of the Prior Lease is extended until the Commencement Date of the New Lease or until June 30, 1996, whichever is earlier.

- **Reaffirmation of Lease**. The New Lease, as amended by this Agreement, is reaffirmed

- **Term of Lease.** The termination date of the New Lease is amended to terminate on the twentieth (20th) anniversary of the substantial completion of the Phase I Improvements, or, if Bundox undertakes the Phase II Improvements at substantially the same time as the Phase I Improvements, then upon the substantial completion of both the Phase I and Phase II Improvements. Because Port may terminate the New Lease on or after the second anniversary of the effective date if the Phase I Improvements have not been substantially completed, this amendment effectively allows a New Lease term of up to a maximum of twenty-two (22) years.

- **Consent to Encumbrance.** Port consents to the encumbrance of the New Lease by Bank of America and SBA under the terms and conditions set forth in the attached agreement.

- **Lease Amendments Requested by Lender.** The lender has requested certain amendments to Section 20 of the New Lease with regard to Security Interests. In particular, the lender has requested the following:

  -- If the Lease terminates for any reason or be rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, the lender shall have the right to enter into a new lease on the same terms and conditions as those set forth in the New Lease, provided that the lender shall have remedied all monetary defaults and shall promptly commence, and expeditiously to continue, to remedy all other defaults susceptible of being remedied.

  -- An assignment of the Lease made in connection with the lender's security documents may be made without Port's consent if such assignment is by judicial or nonjudicial foreclosure or deed in lieu of foreclosure. Otherwise, the New Lease provides that any other assignments requires Port consent.

  -- Port agrees not to accept a voluntary surrender of the New Lease and will not enter into or consent to any further amendment of the New Lease that would materially affect the lender's rights without the lender's prior written consent.

  -- Any disposition of insurance proceeds in case of loss shall be subject to the rights of lender as provided in the lender's deeds of Trust during the term of the loans

  -- Any and all eminent domain or condemnation awards or damages payable under the Lease shall be subject to the rights of lender as provided in the lender's deeds of trust during the term of the loans

  -- Port waives the right to obtain a lien on any machinery, equipment or furniture of Bundox that may constitute a part of the fixtures located upon the Premises during the term of the loan

Prepared by: Neil H. Sekhri, Assistant Port General Counsel

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-15

WHEREAS, Charter Section 3.581 empowers the Port Commission with power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, on October 25, 1994, by Resolution No. 94-133, the Port Commission approved Lease No. L-11859 (the "New Lease") with Bundox Restaurant, Inc., an existing Port tenant, and on December 19, 1994, by Ordinance No. 412-94, the Board of Supervisors approved the New Lease; and

WHEREAS, The New Lease became void on June 30, 1995, because Bundox failed to meet certain financing and building permit conditions; and

WHEREAS, Bundox has now received a financing commitment and now seeks Port Commission reaffirmation of Lease L-11859 between the Port and Bundox Restaurant, Inc., a California Corporation, certain amendments thereto, and a consent to encumbrance, the terms of all of which are set forth in the Memorandum of Agenda Item 5B for the Port Commission Meeting on January 23, 1996; now, therefore, be it

RESOLVED, that the Port Commission hereby approves the Reaffirmation and First Amendment to Lease and Consent to Encumbrance between the Port and Bundox Restaurant, Inc. ("Reaffirmation"), incorporating the business terms set forth in the Memorandum for Agenda Item 5B for the Port Commission meeting on January 23, 1996, and that the Executive Director is hereby directed to forward said Reaffirmation to the San Francisco Board of Supervisors for approval by ordinance pursuant to City Charter Section 7.402-1, and to thereafter execute the same; and be it further

RESOLVED, that the Executive Director is hereby authorized to execute such additional documents as requested by lender, including an estoppel certificate, necessary to effect the financing for the tenant improvements, in such form as approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 23, 1996

_____
Secretary

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EXHIBIT 1

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

October 5, 1994

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Anne Halsted, Vice President
Hon. Michael Hardeman
Hon. Frankie G. Lee
Hon. Francis J. O'Neill

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Lease with Bundox Restaurant, Inc., dba the Waterfront Restaurant, at Pier 7½

DIRECTOR'S RECOMMENDATION: ADOPTION OF NEGATIVE DECLARATION AND APPROVAL OF LEASE WITH BUNDOX RESTAURANT, INC.

BUNDOX RESTAURANT, INC.

Bundox Restaurant, Inc. ("Bundox") has been a tenant operating the Waterfront Restaurant at Pier 7½ since 1969 under lease No. L-11856, which terminates on March 31, 1995. The premises under this lease contain 4,245 square feet of restaurant space located on the first floor and mezzanine of a two-story building. The current annual base rent under this lease is $53,190 versus percentage rent based on 6% of food sales and 8% of beverage sales. In Fiscal Year 1993-1994, Waterfront Restaurant gross sales totaled $3,486,471, generating total rent to the Port of $227,380. The principal of Bundox is Mr. Al Falchi.

Bundox has requested a new lease at Pier 7½ following the expiration of its existing lease, and has submitted a business plan for a restaurant redevelopment and expansion, which includes a significant investment. Pursuant to the Port Leasing Policy for Retail Sites, Staff has negotiated a renewal lease with Bundox.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

LEASING POLICY FOR RETAIL SITES

On April 28, 1993, the Port Commission approved the Leasing Policy for Retail Sites (Resolution No. 93-52). This policy recognizes the general principle of the Administrative Code that retail leasing opportunities are to be offered through a competitive bid or request for proposal process. However, the policy also allows for the direct negotiation of a lease with an existing retail tenant if the benefits of direct negotiation exceed the benefits of a public offering. For a lease to be awarded to an existing tenant through direct negotiation, the Commission must determine that:

1. The tenant is in good standing;

2. The tenant is committed to making a significant capital investment supported by a sound business plan which will benefit the Port;

3. The tenancy is in the best economic interest of the Port; and

4. The tenant has a good record of affirmative action and nondiscrimination and is committed to future compliance.

As discussed below, Port Staff believes that Bundox and its proposed business plan satisfy the criteria for direct negotiation.

1. Good Standing

Bundox has a stable history of compliance with all of the obligations of its existing lease. It also has a record of compliance with regulatory mandates. Moreover, it has consistently demonstrated good business practices, provided a dependable level of goods and service, and has provided a welcoming atmosphere to customers of diverse background and ethnicity.

2. Sound Business Plan

The proposed premises are comprised of the entire building in which the existing Waterfront Restaurant is located, portions of the adjacent north and south marginal wharves, the finger pier located at Pier 7½, and a portion of SWL 324 for valet parking. The business plan proposes expansion of the restaurant operation and redevelopment of the premises through a two-phased project at an estimated cost of $3,400,000. Phase I would involve renovation and expansion of the restaurant into the second floor of the existing building at an estimated cost of $2,000,000. Phase II would involve demolition and replacement of the existing finger pier to be used for an outdoor dining area and public access, and the creation of a second outdoor cafe area to the south of the existing building. The cost for the Phase II improvements are estimated at $1,400,000. This cafe area would enhance public access at Pier 7 by making casual dining available to pedestrians through an exterior entrance. The Port would participate in these improvement costs pursuant to its Rent Credit Policy.

3. Best Economic Interest

The fatality rate for restaurants, especially new restaurants and so called "white tablecloth" restaurants is very high. Yet, for twenty-five years, Bundox has been a stable tenant, succeeding in a very competitive market, despite the disruptions caused by the Loma Prieta Earthquake and nearby public works projects. It has in fact established itself as one of the best and most consistently performing restaurants, not only on Port property, but also in San Francisco.

In Fiscal Years 1986/87 through 1988/89, Port restaurant tenants located at Fisherman's Wharf generated an annual average sales of $489 per square foot. By comparison, the Waterfront Restaurant generated sales of $744 per square foot. Only Scoma's exceeded this sales level by generating sales of $922 per square foot.

The California Restaurant Industry Operations Report for 1993, issued by Deloitte and Touche, also supports the strength of the Waterfront Restaurant operation. This report indicates that the median total sales per seat were $5,197 and that the upper quartile sales were $7,788 per seat. By comparison, the Waterfront Restaurant generated $25,000 per seat.

In June 1993, Ernst and Associates, a hospitality/real estate consulting service, reported on trends in San Francisco's white tablecloth restaurants. Most operators interviewed indicated no growth or a decline in annual sales volumes over the past two years. Along the waterfront, including Fisherman's Wharf, restaurants reported a drop in sales of 10-15%, and in North Beach, restaurants reported a drop in sales of 6-10%. The Waterfront Restaurant, however, maintained its sales volume over the past seven years with only a 2% variance.

In addition, based upon its proposed business plan, Bundox expects to significantly increase its sales volume. After the proposed redevelopment and expansion is completed, Bundox expects to generate annual gross sales of $8.8 Million. Based on these sales projections, the Port would realize annual rents of approximately $620,000 before any rent credits.

Port Staff therefore believes that Bundox constitutes the best economic tenant for the site.

4. Affirmative Action

Port Staff has determined that Bundox has a good affirmative action record in employment, purchasing and contracting. In addition, Port Staff has reviewed and approved an Affirmative Action and Nondiscrimination Plan prepared in conjunction with the lease negotiation, which would be enforceable by the lease.

5. Compliance with CEQA

A Final Negative Declaration for the proposed Waterfront Restaurant expansion was adopted and issued by the Department of City Planning on January 20, 1994. The Negative Declaration is attached hereto for review. The Negative Declaration found that there is no substantial evidence that the project could have a significant effect on the environment. No mitigation measures are required.

The Negative Declaration envisioned a finger pier designed with an east/west orientation. Subsequent to the issuance of the Final Negative Declaration, the finger pier design was realigned with a North/South orientation. This modification has been approved by City Planning which opined that the modified design does not impact the scope of the project (See attached memorandum dated September 27, 1994). The modified finger pier design is illustrated on the attached site plan.

PROPOSED LEASE

The fundamental business terms and changes from the standard form lease are indicated below:

1. **Premises**

   a. Building: 9,650 s.f (1st floor, mezzanine, and 2nd floor).

   b. Parking and Fire Lane: 2,828 s.f.

   c. Future Outdoor Seating Area, Finger Pier, and Public Access Area: 8,668 s.f (subject to change based on final construction plans).

   d. Valet parking at SWL 324: 3,960 s.f. (which is subject to relocation).

2. **Term**

   a. 20-Year term (5-Year term for valet parking at SWL 324).

   b. Term and rent commence upon occurrence of all of the following: (1) adoption of an ordinance of the Board of Supervisors approving the lease; (2) obtaining BCDC permit and conditional use permit; (3) obtaining financing for Phase I; and (4) issuance of building permit for Phase I improvements. If all of the foregoing have not occurred by July 30, 1995, the Lease shall not become effective.

   c. Termination rights of Port:

      (1) If Phase I improvements are not completed by the end of the 2nd lease year.

      (2) At any time after the 10th lease year in the event that Phase II improvements are not completed by end of the 7th lease year.

3. **Use:** Restaurant and banquet operation, plus dancing and live entertainment, sale of in-house signature items, and docking of transient vessels.

4. Base Rent

a. Initial Base Rent: $17,500 per month.

b. Base Rent During Phase I Construction: $5,000 per month until the earlier to occur of beneficial occupancy or 9 months.

c. Adjustments to Base Rent:

(1) Cost of living adjustments every 3 years

(2) At year 10, Base Rent adjusted to the greater of: (a) cost of living increase; or (b) 50% of average total monthly rent (Base Rent and Percentage Rent) due during the 7th, 8th, and 9th lease years.

d. Rent for Valet Parking at SWL 324 - $600 per month with annual cost of living increases.

5. Percentage Rent: 7% of all sales receipts.

6. Port Participation in Improvement Costs Through Rent Credits

a. Port will participate in 50% of improvement costs, to a maximum of $1,000,000 for Phase I and a maximum of $700,000 for Phase II.

b. Maximum construction amortization schedule: 40% of monthly Percentage Rent (Percentage Rent due in excess of Base Rent)

c. Maximum amortization period:

(1) One-phase project - Maximum of ten years. (The project shall be considered a one-phase project if construction of Phase II commences less than three years following the completion of the Phase I construction).

(2) Two-phase project - Maximum of seven years for each phase. If Phase II is completed before Bundox has fully amortized Phase I credits, Phase II credits shall not commence until the earlier of the following occurs: (a) Bundox has received full amortization of Phase I credits, or (b) seven years after the completion of Phase I.

7. Assignment/Sale of Business

a. Port approval required with the following factors to be included in the Port's deliberation: (1) projected gross sales and percentage rent to be paid by assignee;

(2) changes in name, reputation, menu, ambiance, and management and operational style.

b. Upon assignment, in connection with the sale of Bundox's business, Base Rent and Percentage Rent factor to be increased to market rates with appraisal provision. Market rates shall reflect the improvements made to the premises.

c. For a 5-year period following assignment, Mr. Al Falchi shall (1) have a management agreement with assignee, (2) personally guarantee the lease, and (3) not act as a principal in another restaurant located within 1,000 feet of the shoreline of Port jurisdiction.

8. Miscellaneous

a. Construction performance/completion bond required.

b. Port responsible for maintaining the substructure.

c. Hazardous materials removal performed at Bundox's cost up to maximum of $5,000. Credit against Base Rent for removal costs in excess of $5,000. (Port survey of premises identified some asbestos, which should be removed at any cost of less than $5,000).

d. Hazardous materials indemnity to exclude pre-existing conditions.

A table is attached that presents a scenario illustrating the potential rental stream to the Port resulting from the proposed lease under a Phase I mode.

Prepared by: Frederic White, Director, Tenant and Maritime Services

AMENDMENT TO LEASES AND CONSENT TO ENCUMBRANCE

This AMENDMENT TO LEASES AND CONSENT TO ENCUMBRANCE ("Amendment") is entered into as of _____, 1995, by and between BUNDOX RESTAURANT INC., a California corporation, its successors and assigns ("Tenant"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), as Landlord, with reference to the following facts:

RECITALS

A. Port and Tenant entered into Lease L-11859, dated as of December 20, 1994 (the "New Lease"), recorded, or a memorandum of which was recorded on __ in Book ___, page ___, official records of county, for the lease by Tenant of that certain real property, together with all improvements then located thereon, or to be constructed by Tenant thereon during the term of the Lease located at Pier 7, the Embarcadero at the foot of Broadway, City and County of San Francisco, State of California, all as more particularly described in the New Lease. Said real property and all improvements and additions thereto and alterations thereof are hereinafter referred to as the "Premises."

B. Port leased to Tenant a portion of the Premises in accordance with the terms of (i) that certain Bundox Restaurant Lease, dated June 12, 1974, by and between Port and Tenant, (ii) that certain Lease (referred to as Lease No. L-9800), dated February 1, 1978, by and between Port and the California Inland Pilots Association, which assigned its leasehold estate to Tenant pursuant to that certain Assignment and Amendment of Lease, dated January 7, 1988, and (iii) that certain Lease (referred to as Lease No. L-11485), dated August 1, 1989, by and between Port and Tenant (all of the foregoing leases shall be referred to collectively as the "Prior Lease" and the premises leased thereunder shall be referred to collectively as the "Prior Premises").

C. Section 2 of the New Lease provides that the New Lease shall commence and be effective on the "Commencement Date" which shall be the date on which the following, among other things, shall have occurred: (i) the procurement by Tenant of financing for Phase I of the Tenant Improvements at commercially reasonable terms; and (ii) the issuance of a Building Permit by Port allowing construction of Phase I of the Tenant Improvements. Section 2 of the New Lease further provided that if the aforementioned requirements are not satisfied on or before July 30, 1995, the New Lease shall not become effective and all terms and conditions stated therein shall become null and void.

D. Despite Tenant's best efforts to satisfy the above-stated requirements, Tenant has been unable to obtain financing at commercially reasonable terms, and therefore Tenant was unable to obtain a building permit from Port by July 30, 1995. Tenant and Port believe that it is reasonable to expect Tenant to obtain financing at commercially reasonable terms and to obtain a Building Permit from Port by February 29, 1996.

E. The original term of the Prior Lease expired on or before November 1, 1994. However, Tenant remains in possession of the Prior Premises under the Prior Lease, and both parties desire to extend the term of the Prior Lease until the Commencement Date of the New Lease, or until Section 2 of the New Lease renders the New Lease null and void, which ever is earlier.

F. Tenant and Port also desire to amend Section 2 of the New Lease to extend the date by which Tenant must obtain financing for the Phase I Tenant Improvements, and obtain a Building Permit from the Port to February 29, 1996.

G. Tenant has received financing commitments from Bank of America Community Development Bank ("BofA") and the U.S. Small Business Administration ("SBA") for construction of the Tenant Improvements under the New Lease, to be secured by Tenant's leasehold interest. As a condition to the financing, BofA and the SBA have requested the Port to consent to the encumbrance of the New Lease and to amend the New Lease to provide certain protections to the Lenders.

H. If not defined herein, all capitalized terms in this Amendment shall have the same meaning as in the New Lease.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Extension of Prior Lease. The Prior Lease is hereby amended to extend the term of the Prior Lease to the Commencement Date of the New Lease or until Section 2 of the New Lease renders the New Lease null and void, whichever is earlier.

2. Reaffirmation of Lease. Port and Tenant hereby reaffirm and review all of the terms and conditions of the New Lease, as amended hereby.

3. Superseding of Prior Lease. The last sentence of Section 1.1, "Prior Lease," of the New Lease is hereby amended to read as follows:

> Port and Tenant each acknowledge and agree that this Lease shall supersede in its entirety the Prior Lease effective as of the "Commencement Date," as hereinafter defined.

4. Change in Date By Which Conditions Precedent to Lease Effectiveness Must Occur. Section 2 of the New Lease is hereby amended to read as follows:

> 2. **Term of Lease.** This Lease shall commence and be effective on the "Commencement Date" which shall be the date upon which all of the following have occurred: (i) the issuance of a Conditional Use Permit by the Planning Department of the City in form and substance satisfactory to Port and Tenant in each of their sole discretion allowing use of the Premises as contemplated herein, (ii) the issuance of a permit by the Bay Conservation and Development Commission in form and in substance satisfactory to Port and Tenant in each of their sole discretion allowing construction of the Tenant Improvements and use of the restaurant and banquet facility contemplated herein; (iii) the adoption of an ordinance of the San Francisco Board of Supervisors approving this Lease; (iv) the procurement by Tenant of financing for Phase I of the Tenant Improvements at commercially reasonable terms; (v) the issuance of a Building Permit by the Port of San Francisco allowing construction of Phase I of the Tenant Improvements. If the aforementioned requirements are not met on or before February 29, 1996, this Lease shall not become effective and all terms and conditions stated herein shall be null and void. Tenant shall use its best efforts to satisfy all of the above-stated conditions on or before February 29, 1996. The terms of this Lease shall terminate on the twentieth (20th) anniversary of the Substantial Completion of the Phase I Improvements, or, if Tenant undertakes the Phase II Improvements at substantially the same time as the Phase I Improvements, then upon the substantial completion of both the Phase I and Phase II Improvements (all as defined in Section 33 hereof) ("Termination Date"), unless sooner terminated as provided for in this Lease (the "Term"). Port and Tenant shall confirm the Commencement Date and Termination Date in writing but failure to do so shall not affect the validity hereof. As used herein, "Anniversary Date" shall mean the first anniversary of the Commencement Date and each anniversary of such date thereafter; provided, however, that

if the Commencement Date is other than the first day of a month, then the first Anniversary Date shall be the first day of the thirteenth (13th) month following the Commencement Date.

5. Consent to Encumbrance. Port and Tenant affirm for the benefit of BofA SBA that (i)BofA SBA are approved "Lenders" for purposes of Section 20 of the New Lease regarding BofA Security Interests, as amended hereby, (ii) Port and Tenant's obligations thereunder shall be for the benefit of BofA and SBA, and (iii) BofA and SBA and their respective successors and assigns each shall have all of the rights of the "Lender" provided thereunder. Port and their respective successors and assigns consents to the following encumbrance of the Lease by BofA and SBA:

(a) Lessee's encumbrance of Lessee's Leasehold by a Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing ("BofA Deed of Trust I") in favor of BofA to secure a note in the principal sum of $1,274,250 made by Lessee, and other obligations set forth in BofA Deed of Trust I which will be recorded in the official Records of San Francisco County;

(b) Lessee's encumbrance of Lessee's Leasehold by a Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing ("BofA Deed of Trust II") in favor of BofA to secure a note in the principal sum of $967,000 made by Lessee, and other obligations set forth in BofA Deed of Trust II which will be recorded in the Official Records of San Francisco County;

(c) Lessee's encumbrance of Lessee's Leasehold by a Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing ("BofA Deed of Trust III") in favor of BofA to secure a note in the principal sum of $1,074,000 made by Lessee, and other obligations set forth in BofA Deed of Trust III which will be recorded in the Official Records San Francisco;

(d) The terms and purposes of the notes, and any extensions or renewals thereof, and other obligations secured by BofA Deed of Trust I, BofA Deed of Trust II, and BofA Deed of Trust III (collectively, the "BofA Deeds of trust");

(e) Lessee's encumbrance of Lessee's Leasehold by a deed of trust ("SBA Deed of Trust") and a Collateral Assignment of Lessee's Interest in Lease ("Collateral Assignment") (the "SBA Security Documents") in favor of the U.S. Small Business Administration (the "SBA") to secure

a note made by Lessee individually and doing business as _____ in the maximum principal amount of _____ (the "SBA Note") and other obligations set forth in the SBA Deed of Trust which will be recorded in the Official Records of San Francisco; and

(f) the terms and purposes of the SBA Note and any extensions or renewals of the SBA Note.

6. Security Interests. Section 20 of New Lease is hereby amended to include the addition of the following provisions for the sole benefit of BofA and SBA:

(o) **Assignment of the Lease.** An assignment of the Lease made in connection with the BofA and SBA Security Documents may be made without Port's consent if such assignment is:

(i) by judicial or nonjudicial foreclosure or deed in lieu of foreclosure under the SBA Deed of Trust and the BofA Deeds of Trust;

(ii) by exercise of rights under the Collateral Assignment including assignment in lieu of foreclosure.

Any subsequent assignment shall be subject to the provisions of Section 20(d) hereof.

(p) **New Lease.** If the Lease shall terminate for any reason or be rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, SBA shall have the right to enter into a new lease ("New Lease") of the Leased Property, exercisable by written notice to Port within sixty (60) days after the effective date of such termination. The term of such New Lease shall begin on the date the Lease terminates and shall continue for the remainder of the existing Lease term. Such New Lease shall otherwise contain the same terms and conditions as those set forth in the Lease, as amended by this Lease Amendment, except for requirements which are no longer applicable or have already been performed, provided that SBA shall have remedied all defaults on the part of Lessee which are susceptible of being remedied by the payment of money, and provided further that such New Lease shall require the lessee thereunder promptly to commence, and expeditiously

to continue, to remedy all other defaults on the part of Lessee to the extent susceptible of being remedied. It is the intention of the parties to this Lease Amendment that such New Lease shall have the same priority as the Lease, relative to other rights or interests to or in the fee estate in the Lease Property, and Port covenants to discharge or cause to be subordinated to such New Lease any lien or encumbrance which is subject to the Lease. The provisions of this Section shall survive the termination of the Lease and shall continue in full force and effect to the same extent as if this Section were a separate and independent contract among Port, Lessee and SBA. From the date on which SBA shall serve upon Port notice of the exercise of its right to a New Lease, SBA may use and enjoy the Leased Property without interference by Port. Notwithstanding the foregoing, SBA shall not have the right to enter into the New Lease in accordance with the provisions of this subparagraph (0) if the indebtedness secured by BofA of the Trust I is outstanding as of the date of termination of the Lease, in which case all rights granted to SBA under this subparagraph (0) shall instead exist for the benefit of, and shall be fully exercisable by, BofA and its successors and assigns.

(q) **Rights of SBA and BofA Regarding Merger of Lease.** Port agrees that the exercise of its rights under the Lease in case of an event of default shall not, without SBA's and BofA's prior written consent, result in the merger of Port's estate with Lessee's estate under the Lease.

(r) **No Surrender or Amendment.** Port shall not accept a voluntary surrender of the Lease or the Leasehold and will not enter into or consent to any further amendment of the Lease that would materially affect SBA's and BofA's rights hereunder without SBA's and BofA prior written consent. Notwithstanding the foregoing, upon an assignment of the Lease or a New Lease by BofA and SBA, Port will consent to the purchase money encumbrance of the assignee's leasehold interest on terms substantially similar to the terms of Section 20 if the Lease, as modified by this Amendment.

(s) **Insurance.** Notwithstanding any Lease provision to the contrary, Lessee shall carry fire and extended coverage insurance policies covering the building or buildings constructed on the Leased Premises with a loss payable clause in favor of

BofA and SBA, as their respective interests may appear, and any disposition of insurance proceeds in case of loss shall be subject to the rights of BofA and provided in the BofA Deed of Trust I so long as the indebtedness secured thereby is outstanding, and thereafter shall be subject to the rights SBA as provided in the Deed of Trust so long as the indebtedness secured thereby is outstanding. Lessee shall provide a copy of the policy to SBA.

(t) **Eminent Domain Awards.** Notwithstanding any Lease provision to the contrary, any and all eminent domain or condemnation awards or damages payable to Tenant under the Lease shall be subject to the rights of BofA as provided in the BofA Deed of Trust I so long as the indebtedness secured thereby is outstanding, and thereafter shall be subject to the rights of SBA as provided in the Deed of Trust so long as the indebtedness secured thereby is outstanding.

(u) **Port's Waiver of Lien Rights.** Port waives the right to obtain, for any liability of Lessee that arises, accrues or is the subject of legal action while any of the BofA Deeds of Trust or the SBA Deed of Trust is in existence, a lien on any machinery, equipment or furniture of Lessee that may constitute a part of the fixtures located upon the Leased Premises.

(v) **Termination by Port.** So long as any indebtedness secured by the BofA Deeds of Trust or the SBA Deed of Trust is outstanding, the Port may not terminated the Lease because of any default or breach thereunder on the part of the Lessee if either BofA or SBA within 30 days after service of written notice on BofA and SBA by the Lessor of Lessor's intention so to terminate:

(1) Cures the default or breach if it can bec ured by the payment or expenditure of money provided to be paid under the terms of the Lease, or if the default or breach is not so curable, commences, or causes the trustee under any of the BofA Deeds of Trust or the SBA Deed of Trust to commence, and thereafter to pursue to completion, steps and proceedings to foreclose on the Leasehold covered by any said Deed of Trust; and

(2) Keeps and performs all of the covenants and conditions of the Lease requiring the payment or expenditure of money by the Lessee until such time as the Leasehold is sold upon foreclosure pursuant to any such Deed of Trust, or is released or reconveyed thereunder, or is transferred upon judicial foreclosure or by an assignment in lieu of foreclosure.

8. Tobacco Products Ban. The following paragraph is added as new Section 27.4 to the New Lease:

Tobacco Products Advertising Ban. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject to this New Lease. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

9. General Provisions.

9.1 **Further Assurances.** Port and Tenant each agree to execute any and all documents and agreements reasonably requested by the other party to further evidence or effectuate this Amendment.

9.2 **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

9.3 **Reaffirmation.** Except as amended hereby, all of the terms and conditions of the Prior Lease and the New Lease shall remain in full force and effect and unchanged.

9.4. **Conflicts.** In case of any conflict between any term or provision of this Amendment and the New Lease or the Prior Lease, the term or provision of this Amendment shall govern.

9.5 **Effect of This Lease Amendment.** To the extent that this Lease Amendment gives additional rights to SBA and BofA, the New Lease is amended and modified for the benefit of SBA and BofA only.

9.6 **Construction.** In this Amendment, the singular number includes the plural whenever the context so requires.

IN WITNESS WHEREOF, this Amendment has been executed at San Francisco, California as of the date first set forth above.

PORT

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION

By: _____
FREDERICK D. WHITE
Director, Tenant and Maritime Services

TENANT

BUNDOX RESTAURANT, INC., a California Corporation

By: _____
AL FALCHI
President

APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

By:_____
NEIL H. SEKHRI
Deputy City Attorney

Port Commission Resolution
No._____

Board of Supervisors Ordinance
No. _____

G:\NHS\WATERFRO\WATERFRO.2EX

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

January 16, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Landlord's Consent to Assignment of Parking Lease from JMC Associates to WCB Twenty-Eight Limited Partnership at Seawall Lot 328 located at Spear Street and the Embarcadero

DIRECTOR'S RECOMMENDATION: APPROVE LANDLORD'S CONSENT TO ASSIGNMENT OF PARKING LEASE FROM JMC ASSOCIATES TO WCB TWENTY-EIGHT LIMITED PARTNERSHIP

JMC Associates Limited Partnership ("JMC") is a Tenant under Port Lease No. L-10814 for Premises containing 26,793 square feet of land located at Seawall Lot 328. The Lease has a forty year term ending in 2024. The Premises is being used as a support parking lot for an office building located at One Harrison Street.

As part of a large portfolio transaction, One Harrison Street is being sold to WCB Twenty-Eight Limited Partnership. A condition of the transfer is that the Port consent to an assignment of the Parking Lease from JMC to WCB Twenty-Eight Limited Partnership ("WCB"), a wholly owned affiliate of a partnership with a substantial capital base, and that JMC be released of all of its obligations under the Lease. The rent currently being paid to the Port for the Premises is $.47 per square foot per month and considered to be above market for paved land. JMC has requested that the Port attorn to and accept performance by WCB subject to the delivery to Port of an assumption agreement signed by WCB, in which WCB assumes the duties and obligations of JMC under the Lease.

Staff recommends approval of the assignment of Parking Lease, as described above, to WCB Twenty-Eight Limited Partnership, in a form approved by the City Attorney.

Prepared by: Frederick D. White
Director, Tenant & Maritime Services

THIS PRINT COVERS CALENDAR ITEM NO. 5C

CITY AND COUNTY OF SAN FRANCISCO

PORT COMMISSION

RESOLUTION NO. 96-05

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.58(g) leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Port's Tenant, JMC Associates Limited Partnership ("JMC"), desires to assign all of its right, title and interest in Port Lease No. L-10814 for Premises containing 26,793 square feet of paved land located at Seawall Lot 328 to WCB Twenty-Eight Limited Partnership ("WCB"); and

WHEREAS, the terms of the Parking Lease require Port consent to the assignment of Parking Lease; and

WHEREAS, upon assignment of the Parking Lease to WCB, JMC desires to be fully released from all of its obligations under the Lease; now, therefore, be it

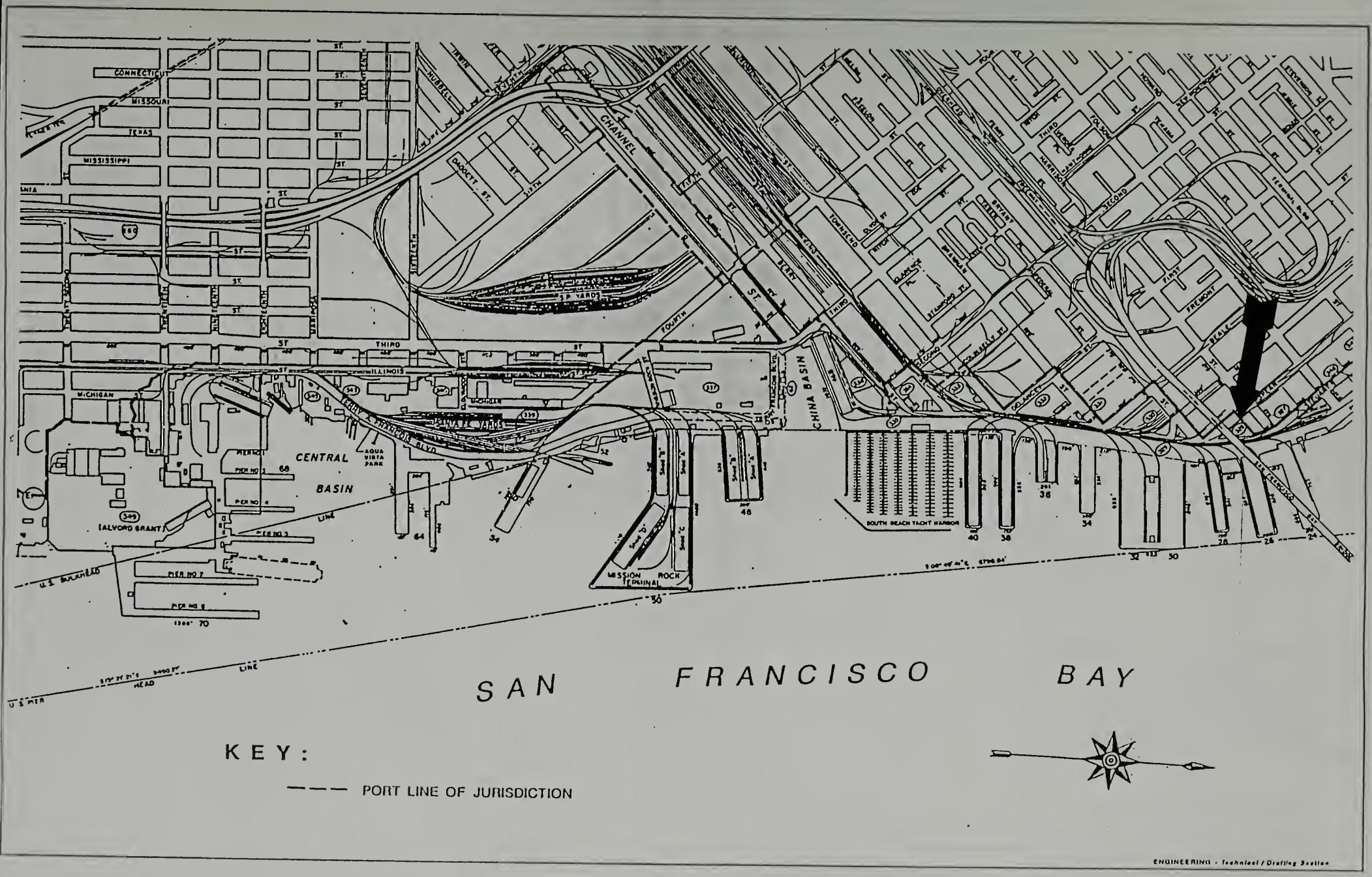
RESOLVED, that the San Francisco Port Commission hereby approves the assignment of parking lease from JMC to WCB, and the release of JMC under the Lease, subject to the express assumption by WCB of all obligations and liabilities under the Lease, and hereby authorizes the Executive Director of the Port to execute a Consent to Assignment of Parking Lease on behalf of the Port in such form as approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 23, 1996.

_____

Secretary

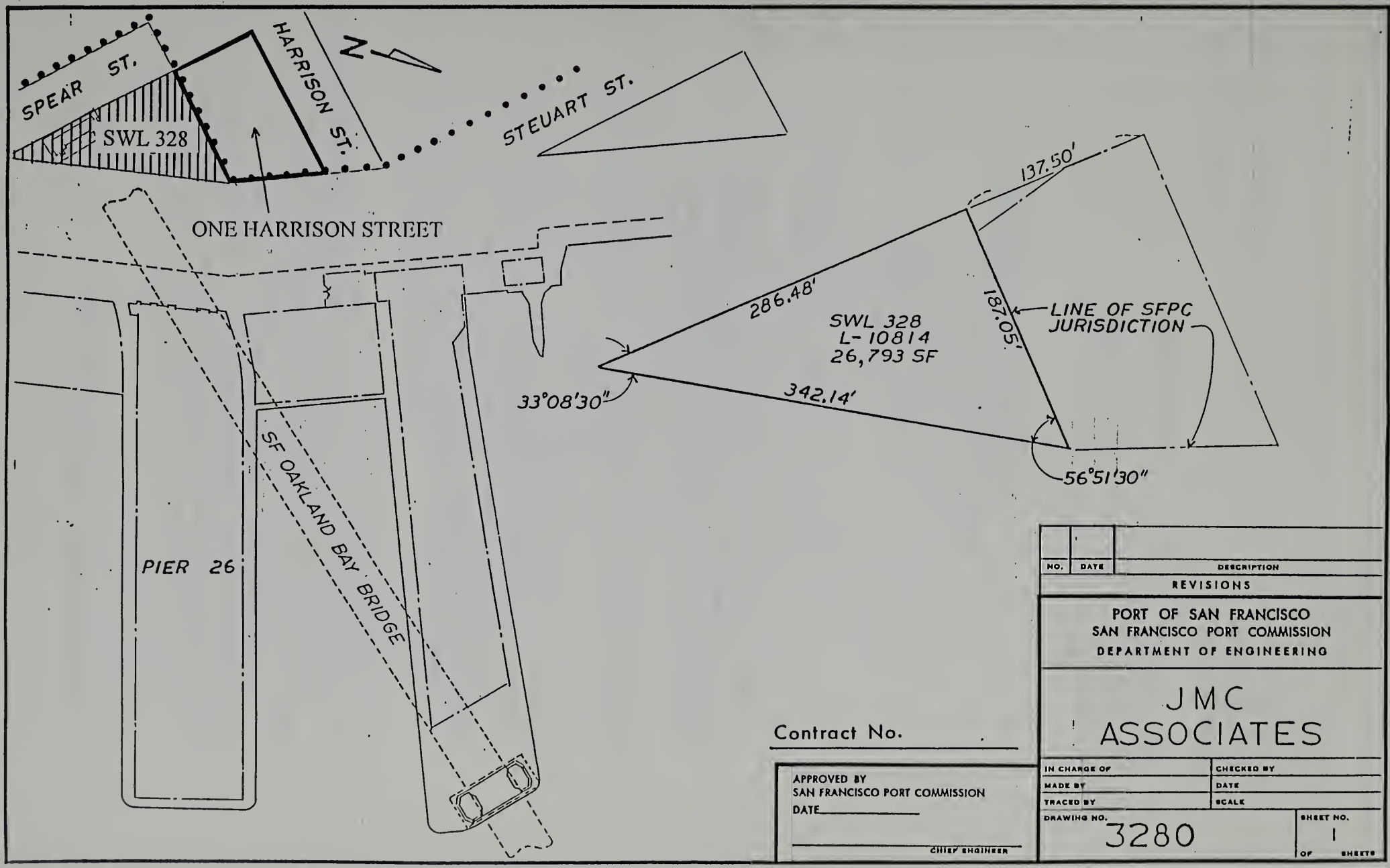
SOUTHERN WATERFRONT



KEY:

——— PORT LINE OF JURISDICTION

ENGINEERING - Technical / Drafting Section



NO.	DATE	DESCRIPTION

REVISIONS

PORT OF SAN FRANCISCO
SAN FRANCISCO PORT COMMISSION
DEPARTMENT OF ENGINEERING

JMC
ASSOCIATES

Contract No.

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE_____

CHIEF ENGINEER

IN CHARGE OF	CHECKED BY
MADE BY	DATE
TRACED BY	SCALE

DRAWING NO. 3280

SHEET NO. 1 OF SHEETS

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

January 23, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie Lee, Vice President
Hon. Anne Halstead
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Contract Amendment for Environmental Science Associates, Inc. and Letter Agreement Amendment with the Planning Department for preparation of an Environmental Impact Report for the Waterfront Land Use Plan.

DIRECTOR'S RECOMMENDATION: APPROVE THE PROPOSED AMENDMENTS TO THE CONTRACT AND LETTER AGREEMENT

In June 1994, the Port entered into a contract with Environmental Science Associates (ESA) and approved a letter agreement with the Department of City Planning (DCP) to prepare an EIR for the Draft Waterfront Land Use Plan. During the course of preparing the first preliminary draft, a number of issues arose which were not anticipated when the original scope of work and budget were developed. Amendments to the contract and letter agreement are proposed to complete the Draft EIR.

The proposed amendments are, in large part, a result of the difficulty of estimating the level of effort necessary to adequately evaluate a project as complex as the Waterfront Land Use Plan. The vast area of the property owned by the Port, combined with the numerous overlapping federal, state and local regulations and legal precedents which have dictated its use, further complicate the task of developing a methodology for evaluating the environmental impacts of the project. The EIR team expended significant additional effort beyond that assumed in the original contract to develop EIR alternatives which enable the EIR analysis to identify the range of impacts that could be generated by the various acceptable land uses allowed for each Port site

under the Waterfront Land Use Plan, study the implications of possible amendments to various land use regulations affecting Port property, and evaluate the impacts of various types of land uses on surrounding areas. Specific issues which were not anticipated when the original scope of work and budget were developed include:

* Subsequent to the initiation of the contract to prepare the Draft EIR, several major projects have filed applications for approval, such as the Rincon Hill Arena, or have clearly announced an intent to proceed, such as the Giants' proposal for a ballpark at China Basin. The Office of Environmental Review requires consideration of these potential future projects as part of the EIR cumulative analysis. The analysis of such complex projects requires much more extensive coordination with various project sponsors.

* The Port has been advised by the City Attorney to incorporate into the EIR a more detailed discussion of its forthcoming proposals to amend or update certain policies of the City's Master Plan and Planning Code, since these amendments are integral to the implementation of the Draft Waterfront Land Use Plan.

* There is also a need for additional technical analysis for certain topics including, but not limited to, regional highways and transit analysis and for coordination with the EIR for the Mid Embarcadero Roadway/Terminal Separator Structure EIR.

The Port is requiring ESA and DCP to incorporate these analyses into the Program EIR in order to produce a document that complies with the California Environmental Quality Act and to ensure that the public and decision makers will have sufficient information about the project and associated actions sought by the Port to adopt the Waterfront Land Use Plan.

The additional scope of work for Environmental Science Associates includes:

* Further development of EIR alternatives and project description and additional coordination with the Port and DCP.
* Additional analysis of hazardous materials, hydrology and water quality and historic architectural resources.
* Expansion of the variant analysis to include a more detailed discussion of upcoming projects on particular sites and to cover all topic areas.
* Visual quality analysis to be performed by ESA rather than DCP, with a commensurate reduction to DCP's budget.
* Technical support to reduce the time required to initiate Administrative Review of the draft.

The additional scope of work for Department of City Planning includes:

* Additional coordination with the Port and City Attorney to incorporate critical regulatory and land use assumptions into the EIR alternatives and project description.
* Ongoing monitoring of projects that will be considered in the variant analysis and development of an appropriate methodology for ESA's analysis of the variants to the EIR alternatives, across all topic areas.
* New analysis of specific Master Plan, Planning Code and BCDC regulatory changes necessary to implement the Draft Waterfront Land Use Plan.
* Transportation analysis including regional and local transit, regional highways and coordination with the Mid-Embarcadero Roadway/Terminal Separator Structure EIR.

The change in the scope of work results in additional fees of $66,030 and $60,000 for ESA and DCP services, respectively. These contract modifications, including a contingency of $5,000, total $131,030 and are funded in the Capital Plan approved by the Port Commission in April 1995. Once the extent of public comments on the Draft EIR are known (in Summer 1996), the remaining project scope will be reviewed. Port Commission approval will be sought for any additional funds that may be necessary at that time.

The schedule for Draft EIR publication is dependent upon the number and type of comments received from relevant agencies and key City staff members on the Administrative Draft EIR. Publication is scheduled for no later than mid-May and may occur as early as mid-April. Certification of the Final EIR by the Planning Commission is scheduled to occur in the fall of 1996, depending on the number and type of comments received from the public on the Draft EIR.

Prepared by: Sharon Lee Polledri
Director, Planning & Development

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-12

WHEREAS, on June 28, 1994 the Port Commission adopted Resolution No. 94-98 approving the award of the Waterfront Plan Environmental Impact Report contract to Environmental Science Associates, Inc. for $395,000; and

WHEREAS, on June 27, 1995 a contract modification was approved for $16,500 to prepare an evaluation of intermodal cargo transiting through San Francisco Bay terminals for EIR analysis purposes; and

WHEREAS, on June 30, 1995 a contract modification was approved for $16,830 to analyze traffic impacts of the Waterfront Land Use Plan using a methodology that is consistent with that used in the Mid Embarcadero Roadway/Terminal Separator Structure EIR, per requirements of the Office of Environmental Review; and

WHEREAS, changes in the scope of work to prepare the Waterfront Plan EIR are required to produce a document that complies with the California Environmental Quality Act and to ensure that the public and decision makers have complete information about the project and associated actions sought by the Port to adopt the Waterfront Land Use Plan; and

WHEREAS, funding for the amendment is provided in the Capital Plan adopted by the Port Commission in April 1995; therefore be it

RESOLVED, that the San Francisco Port Commission hereby approves amending the Waterfront Plan Environmental Impact Report Contract with Environmental Science Associates, Inc. for an additional $66,030, increasing the total contract amount to $494,360.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 23, 1996.

_____
Secretary

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-13

WHEREAS, on June 28, 1994 the Port Commission adopted Resolution No. 94-99 approving the Waterfront Plan Environmental Impact Report letter agreement with the Department of City Planning for $205,000; and

WHEREAS, changes in the scope of work to prepare the Waterfront Plan EIR are required to produce a document that complies with the California Environmental Quality Act and to ensure that the public and decision makers have complete information about the project and associated actions sought by the Port to adopt the Waterfront Land Use Plan; and

WHEREAS, the Planning Department remains available to perform specific portions of the overall scope of services to prepare an EIR, in collaboration with the selected consultant; and

WHEREAS, funding for the amendment is provided in the Capital Plan adopted by the Port Commission in April 1995; therefore be it

RESOLVED, that the San Francisco Port Commission hereby approves amending the Waterfront Plan Environmental Impact Report letter agreement with the Department of City Planning for an additional $60,000, increasing the total contract amount to $265,000.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 23, 1996.

_____
Secretary

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PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

January 17, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Preston Cook
Hon. Francis J. O'Neill

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Lease with Foss Maritime at Pier 29

DIRECTOR'S RECOMMENDATION: APPROVE LEASE WITH FOSS MARITIME

Foss Maritime operates tug boats in San Francisco Bay assisting ships into their berths and escorting tankers. The Port and Foss have negotiated a lease (L-12212) within the standard leasing parameters with terms as follows:

Premises: 15,750 square feet of Pier 29 stringer (450 lineal feet)
Term: One year
Rent: $2,990.00 per month
Rental Rate: $.19 per square foot

Commission approval is required because the prospective tenant has requested a revision of the exculpation language in the lease to eliminate waiver of claims against the Port by Tenant due to Port's negligence. The proposed language is currently in use in other City Leases.

THIS PRINT COVERS CALENDAR ITEM NO. 9A

The existing lease language is as follows:

> "13.2 Exculpation. Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against Port, City and their officers, agents and employees, and agrees to hold Port, City and their officers, agents and employees harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about said Premises for any cause arising at any time, including without limitation all claims arising from the joint or concurrent negligence of Port or City or their Agents, but excluding any intentionally harmful acts committed solely by Port or City."

The proposed lease language is as follows:

> "13.2 Exculpation. Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against Port, City and their officers, agents and employees, and agrees to hold Port, City and their officers, agents and employees harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about said Premises for any cause arising at any time. ~~including without limitation all claims arising from the joint or concurrent negligence of Port or City or their Agents, but excluding any intentionally harmful acts committed solely by Port or City.~~ Nothing herein shall relieve Port from liability caused solely and directly by the gross negligence or willful misconduct of Port or its Agents, but Port shall not be liable under any circumstances for any consequential, incidental or punitive damages."

Prepared by: Frederick D. White, Director, Tenant & Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-14

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, staff has negotiated a mutually acceptable revision of the Port's standard exculpation clause consistent with the request of Foss Maritime; and therefore be it

RESOLVED, that the Port Commission hereby approves that certain Lease L-12212 between the Port and Foss Maritime Company, the terms of which are set forth in the Memorandum of Agenda Item No. 9A for the Port Commission Meeting on January 23, 1996, and hereby authorizes the Executive director of the Port, or his designated Director of Tenant and Maritime Services, to execute the same on behalf of the Port.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 23, 1996.

_____
Secretary

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Notice

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

NOTICE

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The Giants will not be making their ballpark presentation scheduled for the January 23, 1996 Port Commission Meeting, due to a scheduling conflict. Their presentation will be recalendared for a later date.

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CITY AND COUNTY OF SAN FRANCISCO
PORT COMMISSION

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MINUTES OF THE MEETING
JANUARY 23, 1996

1. **ROLL CALL**

The meeting was called to order by Commission President Michael Hardeman at 4:05 p.m. The following Commissioners were present: Michael Hardeman, Anne Halsted, Preston Cook and Frank O'Neill. Commissioner Lee was not present.

2. **APPROVAL OF MINUTES** - January 9, 1996

ACTION: Commissioner Cook moved approval; Commissioner O'Neill seconded the motion. All Commissioners were in favor; the minutes were adopted.

The Commission Secretary announced that Items 4A, 5A, and 5B will be carried forward to the next meeting.

3. **EXECUTIVE**

A. Executive Director's Report

Mr. Bouey reported the following:

(1) Emilio Cruz has been named the Mayor's Chief of Staff. On behalf of the Commission and staff, Mr. Bouey wished him well on his new assignment.

(2) Waterfront Plan - The Commission at the last meeting, approved an MOU with BCDC to work on altering their policies and regulations to achieve conformity with the Waterfront Plan. Mr. Bouey appeared before BCDC last week and the MOU was unanimously approved by BCDC.

(3) Pier 45 Advisory Group: Mr. Bouey handed the Commission a copy of the January 24 agenda for the advisory group meeting. Mr. Bouey indicated that the advisory group has been established to provide input and guidance on the re-use of Sheds A and C. The focus of this group is to propose how the balance of Pier 45 should be used. From the Port's point view, the advisory group should propose uses for the pier to meet the needs of the fishing industry, maintain the character of Fisherman's Wharf and at least break-even or provide some revenue to the Port.

In response to Commissioner Cook's inquiry regarding the group's length of service, Mr. Bouey responded that their term will expire at the conclusion of the report, which will be sometime in the spring or early summer at the latest.

In response to Commissioner Cook's concern about having this committee do a thorough job as quickly as possible, Mr. Bouey stated that Ms. Sharon Polledri will be in attendance at the meeting and will communicate Commissioner Cook's concern to the group. As well, the advisory group understands that the Port is looking for a pragmatic approach to this piece of property. In response to Commissioner Cook's request for a written status report, Mr. Bouey indicated that Ms. Polledri will provide the Commission a status report at the end of each month. Commissioner Cook inquired how the advisory group will be staffed, Mr. Bouey replied that it will be staffed through our Planning Department, in particular, Dave Mercado.

Commissioner Hardeman acknowledged former supervisor Wendy Nelder's presence at the meeting and added that she is doing a general survey/analysis of the Port for the new administration. Commissioner Hardeman indicated that he and the Executive Director have met with the Mayor and relayed that the Mayor indicated that he wants the Port to be pro-maritime. Commissioner Hardeman also mentioned that he and Commissioner Cook have met with Ben Kutnick, Director of Administration, to discuss the Port's budget which will be subsequently presented to the Board of Supervisors, after Commission's approval.

Commissioner Cook commented that in looking through the year-to-date leasing summary report, he commended staff for doing an excellent job. The Leasing Department completed 143 leases for the Port, with a net increase of $1.4 million in revenue. It shows a strong commitment by the Commission and staff for providing good service. Because of this aggressive effort, the Port has now turned the tide and made a profit. He thanked staff for a job well done.

B. Presentation by Marketing Manager Carolyn Macmillan regarding Port's Marketing efforts with emphasis on filming and special events.

Marketing Manager Carolyn Macmillan stated that the Marketing Department has ten different industries that it markets - cruise, cargo, ship repair, excursions, ferries, fishing, leasing, retail, restaurants, special events and filming; as well it attends to media inquiries and the design of publications. The goals of the Marketing Department are to increase public usage of the waterfront, increase the revenues of Port tenants and inform and educate the public regarding the Port. The emphasis of this presentation is the promotional marketing that the department has done to date.

- PortFolio - The purpose of PortFolio, with a circulation of 16,500, is promotional to attract residents and visitors to the waterfront and to relay Port news and issues. The department has also been working on collateral pieces and press kits that address all industries. This will provide general information and allows customize information relating to specific industries.

- Greeter Program - Last year the greeter program was established in the cruise terminal. There are about 30 volunteers in hand to help the passengers on points of interest in the City. Additionally, a 7-½ minute general promotion video was also produced. Staff also worked on advertising for cargo, cruise ship repair, restaurants, retail and excursion. Additionally, a program is being established

that will help increase the residential and regional traffic for retail, restaurants, excursions and sport fishing through a variety of different methods.

- Special Events - Special events such as the Whaleboat race, Black and White Ball, New Year's Eve Party, Sky Fog Concert, Festa Italiana, Fleet Week, Dicken's Fair, In-line Skating and Gay Freedom Day Parade last year brought 700,000 people to the waterfront. In addition to the annual events, we hope to see in 1996 Old San Francisco days, an Olympic Committee party at Pier 45, the ESPN Extreme Games, and Dragon Boat Races. We hope to eventually have at least an event a month. Also, the Port ties tenants to events that can assist them.

  The permit procedure has been streamlined and a special events package at the Port is in place. Last year, the revenues for special events were approximately $10,000. As of today, the Port made $50,000; and hopes to see $100,000 by the end of this fiscal year.

- Filming - The Port has been a location for staging and set design, which gives free advertising to the Port's tenants. This year, a location book to determine where directors can shoot is being established. Staff will attend a location expo and a tour with location scouts to show Port properties. Staff works with the Film Commission and with marketing companies. Film revenues in 1994/95 was $95,000; year to date $217,000 and we expect a $295,000 revenue by the end of the fiscal year.

Commissioner O'Neill inquired about the dragon boat races. Jeff Bauer responded that it is a traditional boat race in Asia; consists of four boats with teams of 8 people. Commissioner O'Neill inquired how the public can obtain a copy of the video; Ms. Macmillan responded that the Marketing Department can provide copies.

Mr. Bouey added that when the Commission approved the reorganization of the Port, it included, for the first time, a Marketing Department. This provided a vehicle to promote activities sometimes jointly with Port tenants; promoting the City and the waterfront but also the welfare and to the benefit of our tenants. The first Marketing Director hired is Carolyn Macmillan; she has brought imagination and creativity that has exceeded his expectations. She has done a first-rate job and does it with panache. With regard to filming, the Port made about $30,000 in 1992-1993; and this year, we should experience a ten-fold increase.

Commissioner Hardeman added that Ms. Macmillan has done a great job on all projects assigned to her that she is familiar with.

He also wanted to clarify his statement earlier in the meeting that criticism of the Port by Mayor Brown for not being pro-maritime was directed at the Director and the Commissioners, not staff. The Mayor, in fact, stated he thought the Port has a wonderful staff.

4. SPECIAL ITEM

A. Presentation of the proposed ballpark by San Francisco Giants Executive Vice President, Larry Baer. (This item has been put over.)

5. TENANT & MARITIME SERVICES

A. Approval of percentage rental adjustments for Castagnola's, Fisherman's Grotto, Nick's Lighthouse, Sabella & LaTorre, Tarantino's, Cresci's Brothers, Franciscan Restaurant and Guardino's at Fisherman's Wharf. (Resolution No. 96-03) (This item has been put over.)

B. Approval of Reaffirmation and First Amendment to Lease and Consent to Encumbrance with Bundox, Inc., dba the Waterfront Restaurant, at Pier 7-½ (Resolution No. 96-15) (This item has been put over.)

C. Approval of Landlord's Consent to Assignment of Parking Lease from JMC Associates to WCB Twenty-Eight Limited Partnership at Seawall Lot 328 located at Spear Street and the Embarcadero. (Resolution No. 96-05)

Mr. Bouey stated that JMC Associates is currently our tenant. They own a building at One Harrison Street and the Port owns the adjacent lot which they use as a parking facility. As part of a portfolio transaction, One Harrison Street is being sold to WCB 28 Limited Partnership. A condition of the sale is that the lease to the parking lot move along with the building being sold. The current rent is $.47 per sq. ft.

ACTION: Commissioner Cook moved approval; Commissioner Halsted seconded the motion. All Commissioners were in favor; the resolution was adopted.

6. FACILITIES & OPERATIONS

7. PLANNING & DEVELOPMENT

A. Approval of Contract Amendment for Environmental Science Associates, Inc. (Resolution No. 96-12) and Letter Agreement Amendment with the Planning Department for preparation of an Environmental Impact Report for the Waterfront Land Use Plan. (Resolution No. 96-13)

Mr. Bouey stated that at the last meeting, he reported that the draft EIR would not be completed at the end of January, but most likely in the middle of May. He also mentioned that the contracts need to be amended for Environmental Science Associates and the Department of City Planning to perform the extra work. A contract modification for ESA in the amount of $66,000 will bring their contract total to $494,000. A contract modification for City Planning in the amount of $60,000 will bringing their contract total to $265,000 . The three areas in which additional work is needed are: (1) Since the initiation of the EIR, several major projects have filed approval or about to, namely: the Rincon Hill arena and the San Francisco Giants

ballpark; (2) The City Attorney has informed the Port that it needs greater and more detailed discussion of the conforming amendments to the Master Plan to bring conformity to the City's Master Plan and the Waterfront Plan; (3) A need for a regional transit analysis.

In response to Commissioner O'Neill's inquiry of the total contract amount, Mr. Bouey responded that the total contract amount is $759,000 plus $5,000 contingency, for a total of $764,000. He added that this is within the budget previously approved in the capital plan and requires no additional allocation of funds.

ACTION: Commissioner Halsted moved approval; Commissioner Cook seconded the motion. All Commissioners were in favor; the resolution was adopted.

8. ADMINISTRATION

9. CONSENT CALENDAR

A. Approval of one year lease with Foss Maritime at Pier 29. (Resolution No. 96-14)

ACTION: Commissioner Cook moved approval; Commissioner O'Neill seconded the motion. All Commissioners were in favor; the resolution was adopted.

10. NEW BUSINESS / PUBLIC COMMENT

Mr. Barry Binsky, spoke on behalf of the Inland Boatmen's Union regarding their concerns with some matters that will be before the Commission. He indicated that letters were sent to the Commission of their concerns. As the Commission is aware, Red & White is being sold to Pier 39. Their major concern is that the sales agreement, which he can provide the Commission, calls for Red & White to fire all the current employees prior to the business being transferred. His organization represents 60 people, many of whom have over 20 years of service with the company. He claims that at no point in the sale would anyone talk to them until it was a done deal. The information was eventually obtained from the Public Utilities Commission. They made numerous attempts to come to some agreement with both the old and new employers but have been stonewalled on both ends. He met with the old employer but he would not commit to severance arrangements which were included in their labor agreement. The new employer committed to them verbally to not only take their employees but also take their union contract. He committed to that several times over the course of the sales negotiations until the agreement was signed and then refused to deal with them. Had they known that this was to be the case, they would have considered an employee buy-out. He wanted to make the Commission aware of the situation and added that they're available if the Commission have any concerns or questions regarding this matter.

Mr. Bouey stated that last week he received a letter from the Inland Boatmen's Union and as the Commission is aware, staff has questions and concerns with regard to the sale. He will contact Mr. Seccombe tomorrow and invite him to meet with staff. Mr. Binsky

indicated that on behalf of Mr. Seccombe, he would be more than happy to meet with the Commission and staff at any time.

Commissioner O'Neill inquired about getting a copy of the sales agreement, Mr. Binsky stated that he would provide the Commissioner a copy. Commissioner Hardeman reiterated that the Executive Director has volunteered to look into the matter and has the full Commission's support.

11. EXECUTIVE SESSION

At 4:35 p.m. the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following:

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - ***This session is closed to any non-Port representative.***

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: Dennis P. Bouey, Executive Director
AES Representative: Mark Woodruff

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION AND ANTICIPATED LITIGATION MATTERS

(1) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

(a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

(2) Discussion of significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case).

At 5:55 p.m., Commissioners Hardeman, Lee, Halsted, Cook, and O'Neill returned from executive session and convened in public session.

ACTION: Commissioner Halsted moved approval to not disclose any information discussed in the executive session; Commissioner O'Neill seconded the motion. All Commissioners were in favor.

The meeting was adjourned at 5:58 p.m.

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SAN FRANCISCO
PORT COMMISSION

REGULAR MEETING
4:00 P.M., TUESDAY, FEBRUARY 13, 1996
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CALIFORNIA

AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - January 23, 1996

3. **EXECUTIVE**

   A. Executive Director's Report

   B. Presentation by Joe Wyman regarding ferry service.

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4. **LEGISLATIVE**

5. **TENANT & MARITIME SERVICES**

   A. Approval of percentage rental adjustments for Castagnola's, Fisherman's Grotto, Nick's Lighthouse, Sabella & LaTorre, Tarantino's, Cresci's Brothers, Franciscan Restaurant and Guardino's at Fisherman's Wharf. (Resolution No. 96-03)

   B. Approval of Reaffirmation and First Amendment to Lease and Consent to Encumbrance with Bundox, Inc., dba the Waterfront Restaurant, at Pier 7-½ (Resolution No. 96-15)

   C. Adoption of Finding of Negative Declaration and Approval of Lease with Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc. for a 20-year 9-month term with three 5-year options for a maritime recreation center at Pier 38 (Resolution No. 96-20)

   D. Adoption of Finding of Negative Declaration and Approval of Lease with Bedrock Concrete, Inc. for a 5-year term at Seawall Lot 344 north of Amador Street at Wharf 90-92. (Resolution No. 96-19)

6. **FACILITIES & OPERATIONS**

7. **PLANNING & DEVELOPMENT**

   A. Approval of Contract Amendment for the Duffey Company, for additional analysis to complete the Environmental Impact Report for the Hyde Street Fishing Harbor. (Resolution No. 96-18)

8. ADMINISTRATION

A. Approval of 1996/97 Operating Budget (Resolution No. 96-17)

B. Approval of Supplemental Appropriation for Purchase of Replacement Vehicles. (Resolution No. 96-16)

9. CONSENT CALENDAR

10. NEW BUSINESS / PUBLIC COMMENT

11. EXECUTIVE SESSION

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - ***This session is closed to any non-Port representative.***

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: Dennis P. Bouey, Executive Director
AES Representative: Mark Woodruff

Under Negotiation: ____ Price ____ Terms of Payment ✓ Both

An executive session has been calendared to discuss real property negotiations between the Port and AES, a California corporation, regarding Cogeneration Plant. This is specifically authorized under California Government Code Section 54956.8.

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER

(1) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

(a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

The City Attorney is of the opinion that based on existing facts and circumstances, discussion of existing litigation matters in open session would prejudice the legal position of the Port. An executive session is specifically authorized under California Government Code Section 54956.9(a)(b).

C. Vote in open session on whether to disclose Executive Session discussions (S.F. Admin. Code Sec. 67.14)

12. ADJOURNMENT

Public comment is permitted on any matter within Port jurisdiction, and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary.

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

February 1, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of percentage rental adjustments for Castagnola's, Fisherman's Grotto, Nick's Lighthouse, Sabella & LaTorre, Tarantino's, Cresci's Brothers, Franciscan Restaurant and Guardino's at Fisherman's Wharf.

DIRECTOR'S RECOMMENDATION: APPROVE PERCENTAGE RENTAL ADJUSTMENTS SET FORTH HEREIN

BACKGROUND

In 1970, the Port entered into eight 66-year leases with restaurants and retailers at Fisherman's Wharf, which are summarized on Exhibit A (the "Subject Leases"). Each of the Subject Leases provide for the payment of percentage rent to the Port, and they further provide for the review and adjustment in the rate of percentage rent every 25 years during the lease term. The first such 25-year anniversary date was May 1, 1995 (the "Effective Date"). Due to ongoing discussions with the tenants for the Subject Leases, the Port and the tenants agreed to extend the time for finalizing the adjustment in the rate of percentage rent. The Port and the tenants also agreed that the final rental adjustment would be retroactive to the Effective Date.

The Subject Leases currently set forth three categories for percentage rent: (1) "Food," (2) "Alcoholic Beverages and All Other Items Sold Through the Bar," and (3) "All Other Uses."

THIS PRINT COVERS CALENDAR ITEM NO. 5A

The current uses for the Subject Leases consist of full service restaurant uses, including outdoor stands on the sidewalk area of the leased premises, and retail uses. Full service restaurant uses are restaurant uses where food and beverages are ordered by and served to customers at their tables, and cooked to the customers' order, for consumption on the leased premises. Full service restaurant uses also include sales of seafood, seafood related items, and beverages from outdoor stands operated on the sidewalk area of the leased premises.

Each of the Subject Leases establishes a similar procedure for the review and adjustment of the rate of percentage rent. If the rates of percentage rent for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the adjustment date, then the Port shall adjust the rates of percentage rent for the Subject Leases accordingly. If the tenant disagrees on the amount of the adjustment, then the tenant has the right to terminate the lease without liability for future rent.

ANALYSIS BY PORT STAFF

In order to determine the rate of percentage rent for like uses in the vicinity of the leased premises for the Subject Leases, the Port hired a consultant to perform a survey and analysis of the rates of percentage rent charged for like uses in the vicinity of the leased premises and to make recommendations regarding the appropriate adjustment in the percentage rental rates for the Subject Leases. Port staff also held several discussions with the tenants for the Subject Leases and their consultants, and considered their comments regarding the appropriate adjustment.

Port staff has concluded that the current rate of percentage rent in the vicinity of the leased premises for the Subject Leases is seven percent (7.0%) for food and alcoholic beverages sold at restaurants providing full table service, and nine percent (9.0%) for retail sales. However, the Subject Leases obligate the tenants to maintain the substructure and exterior of their properties, which is normally the obligation of the landlord. The leased premises for the Subject Leases are located over water, and these maintenance obligations therefore include the seawall and pilings, which are significant obligations. Port staff concluded that the percentage rental rates for the Subject Leases should be lower than the rates in the vicinity of the leased premises because of these maintenance obligations.

The Port also entered into six other leases for the following facilities whose percentage rental rates are also now subject to adjustment: Alioto's #8, Alioto Expo, Cory Galleries, Fish Alley Bar & Grill, Franceschi's, Pompei's Grotto, Sinbad's and Fog City Diner. Port staff, however, has not finalized its discussions with the tenants for these leases. Port staff will make recommendations regarding the adjustment in the percentage rental rates for these leases at a future Port Commission meeting, after discussions with the affected tenants have been completed.

STAFF RECOMMENDATION

Based upon the independent survey and analysis obtained from the Port's consultant, the input provided by the tenants and their consultants, and Port staff's own consideration and review of the data available to it, Port staff recommends that the rates of percentage rent for the Subject Leases be adjusted as follows:

Food, and Alcoholic Beverages and All Other Items Sold Through the Bar (including outdoor stands):	6.5% of gross receipts
All Other Uses:	8.5% of gross receipts

The recommendation of Port staff for percentage rental rates adjustments for each of the Subject Leases are indicated on the attached Exhibit B.

Prepared by: Frederick D. White
Director, Tenant and Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-03

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, certain Port leases identified in Exhibit A attached to the Memorandum regarding Agenda Item 5A for the February 13, 1996 Port Commission meeting ("Memorandum") provide for adjustment in the percentage rents based on the determination that the percentage rents for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the date of the determination; and now therefore be it

RESOLVED, that the Port Commission determines that the rates of percentage rent for full service restaurant and retails uses in San Francisco in the vicinity of the leased premises for the leases identified in Exhibit B attached to the Memorandum have increased to the rates indicated in Exhibit B; and be it further

RESOLVED, that the percentage rents for said leases shall be adjusted as indicated in Exhibit B; and be it further

RESOLVED, that the Executive Director or his designee is hereby authorized to execute all such appropriate documentation as needed to implement this Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 13, 1996.

_____
Secretary

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EXHIBIT A
FISHERMAN'S WHARF SUBJECT LEASES
CURRENT PERCENTAGE RENTAL RATES

Port Lease No.	Location/ Business Name	Primary Type(s) of Business(es)	Current Percentage Rental Rates		
			Food	Beverage*	Other
L-7493	Castagnola's	Full Service Restaurant	5%	6.5%	6.5%
L-7498	Fisherman's Grotto	Full Service Restaurant	5%	6.5%	6.5%
L-7492	Nick's Lighthouse	Full Service Restaurant	5%	6.5%	6.5%
L-7499	Sabella & LaTorre	Full Service Restaurant	5%	6.5%	6.5%
L-7500	Tarantino's	Full Service Restaurant	5%	6.5%	6.5%
L-7494	Cresci Brother's	Full Service Restaurant	5%	6.5%	6.5%
L-7496	Franciscan Restaurant	Full Service Restaurant/Retail	5%	6.5% Crabstand 7%	6.5%
L-7497	Guardino's	Full Service Restaurant/Retail	5%	6.5%	6.5%

*Alcoholic beverages and all other items sold through the bar

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EXHIBIT B
FISHERMAN'S WHARF SUBJECT LEASES
PROPOSED PERCENTAGE RENTAL RATES

Port Lease No.	Business Name	Effective Date	Food	Alcoholic Beverages*	Other Uses
L-7493	Castagnola's	5/1/95	6.5%	6.5%	8.5%
L-7498	Fisherman's Grotto	5/1/95	6.5%	6.5%	8.5%
L-7492	Nick's Lighthouse	5/1/95	6.5%	6.5%	8.5%
L-7499	Sabella & LaTorre	5/1/95	6.5%	6.5%	8.5%
L-7500	Tarantino's	5/1/95	6.5%	6.5%	8.5%
L-7494	Cresci Brother's	5/1/95	6.5%	6.5%	8.5%
L-7496	Franciscan Restaurant	5/1/95	6.5%	6.5%	8.5%
L-7497	Guardino's	5/1/95	6.5%	6.5%	8.5%

* Alcoholic beverages and all other items sold through the bar.

L-7492
L-7494
L-7497
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SAN FRANCISCO BAY

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

February 2, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Preston Cook
Hon. Anne Halsted
Hon. Francis J. O'Neill

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Reaffirmation and First Amendment to Lease and Consent to Encumbrance with Bundox Restaurant, Inc., dba the Waterfront Restaurant, at Pier 7½

DIRECTOR'S RECOMMENDATION: APPROVE REAFFIRMATION AND FIRST AMENDMENT TO LEASE AND CONSENT TO ENCUMBRANCE WITH BUNDOX RESTAURANT, INC. dba THE WATERFRONT RESTAURANT, AT PIER 7 ½

I. BACKGROUND

Bundox Restaurant, Inc., a California corporation ("Bundox") leases from the Port that certain building and adjacent premises located at Pier 7 ½, commonly known as the Waterfront Restaurant, under the terms of (i) that certain Bundox Restaurant Lease No. L-8561, dated June 12, 1974, (ii) that certain Lease (referred to as Lease No. L-9800), dated February 1, 1978, by and between Port and the California Inland Pilots Association, which assigned its leasehold estate to Bundox pursuant to that certain Assignment and Amendment of Lease, dated January 7, 1988, and (iii) that certain Lease (referred to as Lease No. L-11485), dated August 1, 1989 (collectively, the "Prior Lease"). The term of the Prior Lease expired on March 31, 1995, and Bundox has been on a month-to-month tenancy since that time.

On October 25, 1994, by Resolution No. 94-133, the Port Commission approved Lease No. L-11859, a new twenty-year lease with Bundox for the Waterfront Restaurant and adjacent premises ("Lease"). Lease L-11859, was approved by the Board of Supervisors on December 19, 1994, by Ordinance No. 412-94. The terms of the Lease are summarized in the memorandum to Port Commission, dated October 5, 1994, a copy of which is attached to the attached Resolution.

THIS PRINT COVERS CALENDAR ITEM NO. 5B

Section 2 of the Lease provides that the Lease shall commence and be effective on the "Commencement Date" which shall be the date on which the following, among other things, shall have occurred: (i) the procurement by Tenant of financing for Phase I of the Tenant Improvements at commercially reasonable terms; and (ii) the issuance of a Building Permit by Port allowing construction of Phase I of the Tenant Improvements. Section 2 of the Lease further provided that if the aforementioned requirements are not satisfied on or before July 30, 1995, the Lease shall not become effective and all terms and conditions stated therein shall become null and void.

Despite Bundox's efforts to satisfy the above-stated requirements, Bundox was unable to obtain financing at commercially reasonable terms, and therefore was unable to obtain a building permit from Port by July 30, 1995. Bundox believes that it is reasonable to expect that it will obtain financing at commercially reasonable terms and will obtain a Building Permit from Port by June 30, 1996. Bundox has already obtained a preliminary approval from Bank of America and the Small Business Administration for construction and permanent financing, documented with three separate deeds of trust each securing a separate loan. The total amount of financing equals $3,315,250.00.

In order to revive the Lease, which became void on June 30, 1995, the Port Commission and Board of Supervisors will need to reaffirm the Lease. In addition, Bundox's lenders have requested certain amendments to the Lease as a prerequisite to the financing, and have requested the Port's consent to encumbrance, substantially in the form of the Reaffirmation and Amendment to Lease and Consent to Encumbrance attached hereto. Relevant provisions of that agreement are summarized as follows:

- **Extension of Prior Lease.** The term of the Prior Lease is extended until the Commencement Date of the Lease or until June 30, 1996, whichever is earlier.

- **Reaffirmation of Lease.** The Lease, as amended by the agreement, is reaffirmed.

- **Term of Lease.** The termination date of the Lease is amended to terminate on the twentieth (20th) anniversary of the substantial completion of the Phase I Improvements, or, if Bundox undertakes the Phase II Improvements at substantially the same time as the Phase I Improvements, then upon the substantial completion of both the Phase I and Phase II Improvements. Because Port may terminate the Lease on or after the second anniversary of the effective date if the Phase I Improvements have not been substantially completed, this amendment effectively allows a Lease term of up to a maximum of twenty-two (22) years.

- **Consent to Encumbrance.** Port consents to the encumbrance of the Lease by Bank of America and SBA under the terms and conditions set forth in the agreement attached to the attached Resolution.

- **Lease Amendments Requested by Lender.** The lender has requested certain amendments to Section 20 of the Lease with regard to Security Interests. In particular, the lender has requested the following:

  -- If the Lease terminates for any reason or is rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, the lender shall have the right to enter into a new lease on the same terms and conditions as those set forth in the Lease, provided that the lender shall have remedied all monetary defaults and shall promptly commence, and expeditiously to continue, to remedy all other defaults susceptible of being remedied.

  -- An assignment of the Lease made in connection with the lender's security documents may be made without Port's consent if such assignment is by judicial or nonjudicial foreclosure or deed in lieu of foreclosure. The lender also required that any other assignments of the Lease from the lender to a third party bidding at a foreclosure sale be made without Port's consent because of the lender's fiduciary obligation to accept the highest bidder. However, after such assignment, the Port retains the ability to approve the assignee. If the Port does not approve of the assignee, the assignee has 90 days to assign the Lease to an approved assignee. If the Lease has not been assigned to an approved assignee within such period, the Port may terminate the Lease. The Port also agrees to use its best efforts to pre-approve within 30 days any prospective bidders at a foreclosure sale if so requested.

  -- Port agrees not to accept a voluntary surrender of the Lease and will not enter into or consent to any further amendment of the Lease that would materially affect the lender's rights without the lender's prior written consent.

  -- Any disposition of insurance proceeds in case of loss shall be subject to the rights of lender as provided in the lender's deeds of trust during the term of the loans

  -- Any and all eminent domain or condemnation awards or damages payable under the Lease shall be subject to the rights of lender as provided in the lender's deeds of trust during the term of the loans

-- Port waives the right to obtain a lien on any machinery, equipment or furniture of Bundox that may constitute a part of the fixtures located upon the Premises during the term of the loan

Prepared by: Neil H. Sekhri, Assistant Port General Counsel

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-15

WHEREAS, Charter Section 3.581 empowers the Port Commission with power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, on October 25, 1994, by Resolution No. 94-133, the Port Commission approved Lease No. L-11859 (the "Lease") with Bundox Restaurant, Inc., an existing Port tenant, and on December 19, 1994, by Ordinance No. 412-94, the Board of Supervisors approved the Lease; and

WHEREAS, The Lease became void on June 30, 1995, because Bundox failed to meet certain financing and building permit conditions; and

WHEREAS, Bundox has now received a preliminary financing approvals and now seeks Port Commission reaffirmation of Lease L-11859 between the Port and Bundox Restaurant, Inc., a California Corporation, certain amendments thereto, and a consent to encumbrance, the terms of all of which are set forth in the Memorandum of Agenda Item 5B for the Port Commission Meeting on February 13, 1996; and

WHEREAS, the Port Commission, on October 25, 1994, by Resolution No. 94-133, and the Board of Supervisors, on December 23, 1994, by Resolution No. 1035-94, adopted Final Negative Declaration #93.508E, and, found that the proposed project set forth in the Lease would have no significant impact on the environment; now, therefore, be it

RESOLVED, that the Port Commission hereby approves the Reaffirmation and First Amendment to Lease and Consent to Encumbrance between the Port and Bundox Restaurant, Inc. ("Reaffirmation"), substantially in the form attached hereto, and that the Executive Director is hereby directed to forward said Reaffirmation to the San Francisco Board of Supervisors for approval by ordinance pursuant to City Charter Section 7.402-1, and to thereafter execute the same; and be it further

RESOLVED, that the Executive Director is hereby authorized to execute such additional documents as requested by lender, including an estoppel certificate, necessary to effect the financing for the tenant improvements, in such form as approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 13, 1996

_____
Secretary

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EXHIBIT 1

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 278940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

October 5, 1994

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Anne Halsted, Vice President
Hon. Michael Hardeman
Hon. Frankie G. Lee
Hon. Francis J. O'Neill

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Lease with Bundox Restaurant, Inc., dba the Waterfront Restaurant, at Pier 7½

DIRECTOR'S RECOMMENDATION: ADOPTION OF NEGATIVE DECLARATION AND APPROVAL OF LEASE WITH BUNDOX RESTAURANT, INC.

BUNDOX RESTAURANT, INC.

Bundox Restaurant, Inc. ("Bundox") has been a tenant operating the Waterfront Restaurant at Pier 7½ since 1969 under lease No. L-11856, which terminates on March 31, 1995. The premises under this lease contain 4,245 square feet of restaurant space located on the first floor and mezzanine of a two-story building. The current annual base rent under this lease is $53,190 versus percentage rent based on 6% of food sales and 8% of beverage sales. In Fiscal Year 1993-1994, Waterfront Restaurant gross sales totaled $3,486,471, generating total rent to the Port of $227,380. The principal of Bundox is Mr. Al Falchi.

Bundox has requested a new lease at Pier 7½ following the expiration of its existing lease, and has submitted a business plan for a restaurant redevelopment and expansion, which includes a significant investment. Pursuant to the Port Leasing Policy for Retail Sites, Staff has negotiated a renewal lease with Bundox.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

LEASING POLICY FOR RETAIL SITES

On April 28, 1993, the Port Commission approved the Leasing Policy for Retail Sites (Resolution No. 93-52). This policy recognizes the general principle of the Administrative Code that retail leasing opportunities are to be offered through a competitive bid or request for proposal process. However, the policy also allows for the direct negotiation of a lease with an existing retail tenant if the benefits of direct negotiation exceed the benefits of a public offering. For a lease to be awarded to an existing tenant through direct negotiation, the Commission must determine that:

1. The tenant is in good standing;

2. The tenant is committed to making a significant capital investment supported by a sound business plan which will benefit the Port;

3. The tenancy is in the best economic interest of the Port; and

4. The tenant has a good record of affirmative action and nondiscrimination and is committed to future compliance.

As discussed below, Port Staff believes that Bundox and its proposed business plan satisfy the criteria for direct negotiation.

1. Good Standing

Bundox has a stable history of compliance with all of the obligations of its existing lease. It also has a record of compliance with regulatory mandates. Moreover, it has consistently demonstrated good business practices, provided a dependable level of goods and service, and has provided a welcoming atmosphere to customers of diverse background and ethnicity.

2. Sound Business Plan

The proposed premises are comprised of the entire building in which the existing Waterfront Restaurant is located, portions of the adjacent north and south marginal wharves, the finger pier located at Pier 7½, and a portion of SWL 324 for valet parking. The business plan proposes expansion of the restaurant operation and redevelopment of the premises through a two-phased project at an estimated cost of $3,400,000. Phase I would involve renovation and expansion of the restaurant into the second floor of the existing building at an estimated cost of $2,000,000. Phase II would involve demolition and replacement of the existing finger pier to be used for an outdoor dining area and public access, and the creation of a second outdoor cafe area to the south of the existing building. The cost for the Phase II improvements are estimated at $1,400,000. This cafe area would enhance public access at Pier 7 by making casual dining available to pedestrians through an exterior entrance. The Port would participate in these improvement costs pursuant to its Rent Credit Policy.

3. Best Economic Interest

The fatality rate for restaurants, especially new restaurants and so called "white tablecloth" restaurants is very high. Yet, for twenty-five years, Bundox has been a stable tenant, succeeding in a very competitive market, despite the disruptions caused by the Loma Prieta Earthquake and nearby public works projects. It has in fact established itself as one of the best and most consistently performing restaurants, not only on Port property, but also in San Francisco.

In Fiscal Years 1986/87 through 1988/89, Port restaurant tenants located at Fisherman's Wharf generated an annual average sales of $489 per square foot. By comparison, the Waterfront Restaurant generated sales of $744 per square foot. Only Scoma's exceeded this sales level by generating sales of $922 per square foot.

The California Restaurant Industry Operations Report for 1993, issued by Deloitte and Touche, also supports the strength of the Waterfront Restaurant operation. This report indicates that the median total sales per seat were $5,197 and that the upper quartile sales were $7,788 per seat. By comparison, the Waterfront Restaurant generated $25,000 per seat.

In June 1993, Ernst and Associates, a hospitality/real estate consulting service, reported on trends in San Francisco's white tablecloth restaurants. Most operators interviewed indicated no growth or a decline in annual sales volumes over the past two years. Along the waterfront, including Fisherman's Wharf, restaurants reported a drop in sales of 10-15%, and in North Beach, restaurants reported a drop in sales of 6-10%. The Waterfront Restaurant, however, maintained its sales volume over the past seven years with only a 2% variance.

In addition, based upon its proposed business plan, Bundox expects to significantly increase its sales volume. After the proposed redevelopment and expansion is completed, Bundox expects to generate annual gross sales of $8.8 Million. Based on these sales projections, the Port would realize annual rents of approximately $620,000 before any rent credits.

Port Staff therefore believes that Bundox constitutes the best economic tenant for the site.

4. Affirmative Action

Port Staff has determined that Bundox has a good affirmative action record in employment, purchasing and contracting. In addition, Port Staff has reviewed and approved an Affirmative Action and Nondiscrimination Plan prepared in conjunction with the lease negotiation, which would be enforceable by the lease.

5. Compliance with CEQA

A Final Negative Declaration for the proposed Waterfront Restaurant expansion was adopted and issued by the Department of City Planning on January 20, 1994. The Negative Declaration is attached hereto for review. The Negative Declaration found that there is no substantial evidence that the project could have a significant effect on the environment. No mitigation measures are required.

The Negative Declaration envisioned a finger pier designed with an east/west orientation. Subsequent to the issuance of the Final Negative Declaration, the finger pier design was realigned with a North/South orientation. This modification has been approved by City Planning which opined that the modified design does not impact the scope of the project (See attached memorandum dated September 27, 1994). The modified finger pier design is illustrated on the attached site plan.

PROPOSED LEASE

The fundamental business terms and changes from the standard form lease are indicated below:

1. Premises

   a. Building: 9,650 s.f (1st floor, mezzanine, and 2nd floor).

   b. Parking and Fire Lane: 2,828 s.f.

   c. Future Outdoor Seating Area, Finger Pier, and Public Access Area: 8,668 s.f (subject to change based on final construction plans).

   d. Valet parking at SWL 324: 3,960 s.f. (which is subject to relocation).

2. Term

   a. 20-Year term (5-Year term for valet parking at SWL 324).

   b. Term and rent commence upon occurrence of all of the following: (1) adoption of an ordinance of the Board of Supervisors approving the lease; (2) obtaining BCDC permit and conditional use permit; (3) obtaining financing for Phase I; and (4) issuance of building permit for Phase I improvements. If all of the foregoing have not occurred by July 30, 1995, the Lease shall not become effective.

   c. Termination rights of Port:

      (1) If Phase I improvements are not completed by the end of the 2nd lease year.

      (2) At any time after the 10th lease year in the event that Phase II improvements are not completed by end of the 7th lease year.

3. Use: Restaurant and banquet operation, plus dancing and live entertainment, sale of in-house signature items, and docking of transient vessels.

4. Base Rent

a. Initial Base Rent: $17,500 per month.

b. Base Rent During Phase I Construction: $5,000 per month until the earlier to occur of beneficial occupancy or 9 months.

c. Adjustments to Base Rent:

(1) Cost of living adjustments every 3 years

(2) At year 10, Base Rent adjusted to the greater of: (a) cost of living increase; or (b) 50% of average total monthly rent (Base Rent and Percentage Rent) due during the 7th, 8th, and 9th lease years.

d. Rent for Valet Parking at SWL 324 - $600 per month with annual cost of living increases.

5. Percentage Rent: 7% of all sales receipts.

6. Port Participation in Improvement Costs Through Rent Credits

a. Port will participate in 50% of improvement costs, to a maximum of $1,000,000 for Phase I and a maximum of $700,000 for Phase II.

b. Maximum construction amortization schedule: 40% of monthly Percentage Rent (Percentage Rent due in excess of Base Rent)

c. Maximum amortization period:

(1) One-phase project - Maximum of ten years. (The project shall be considered a one-phase project if construction of Phase II commences less than three years following the completion of the Phase I construction).

(2) Two-phase project - Maximum of seven years for each phase. If Phase II is completed before Bundox has fully amortized Phase I credits, Phase II credits shall not commence until the earlier of the following occurs: (a) Bundox has received full amortization of Phase I credits, or (b) seven years after the completion of Phase I.

7. Assignment/Sale of Business

a. Port approval required with the following factors to be included in the Port's deliberation: (1) projected gross sales and percentage rent to be paid by assignee;

(2) changes in name, reputation, menu, ambiance, and management and operational style.

b. Upon assignment, in connection with the sale of Bundox's business, Base Rent and Percentage Rent factor to be increased to market rates with appraisal provision. Market rates shall reflect the improvements made to the premises.

c. For a 5-year period following assignment, Mr. Al Falchi shall (1) have a management agreement with assignee, (2) personally guarantee the lease, and (3) not act as a principal in another restaurant located within 1,000 feet of the shoreline of Port jurisdiction.

8. Miscellaneous

a. Construction performance/completion bond required.

b. Port responsible for maintaining the substructure.

c. Hazardous materials removal performed at Bundox's cost up to maximum of $5,000. Credit against Base Rent for removal costs in excess of $5,000. (Port survey of premises identified some asbestos, which should be removed at any cost of less than $5,000).

d. Hazardous materials indemnity to exclude pre-existing conditions.

A table is attached that presents a scenario illustrating the potential rental stream to the Port resulting from the proposed lease under a Phase I mode.

Prepared by: Frederic White, Director, Tenant and Maritime Services

Recording Requested
By and When Recorded
Return To:

For Recorder's Use Only:

REAFFIRMATION AND AMENDMENT TO LEASE AND CONSENT TO ENCUMBRANCE

This REAFFIRMATION AND AMENDMENT TO LEASE AND CONSENT TO ENCUMBRANCE ("Amendment") is entered into as of _____, 1995, by and between BUNDOX RESTAURANT INC., a California corporation, its successors and assigns ("Tenant"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), as Landlord, with reference to the following facts:

RECITALS

A. Port and Tenant entered into Lease L-11859, dated as of December 20, 1994 (the "Lease"), for the lease by Tenant of that certain real property, together with all improvements then located thereon, or to be constructed by Tenant thereon during the term of the Lease located at Pier 7, the Embarcadero at the foot of Broadway, City and County of San Francisco, State of California, all as more particularly described in the Lease. Said real property and all improvements and additions thereto and alterations thereof are hereinafter referred to as the "Premises."

B. Port leased to Tenant a portion of the Premises in accordance with the terms of (i) that certain Bundox Restaurant Lease, dated June 12, 1974, by and between Port and Tenant, (ii) that certain Lease (referred to as Lease No. L-9800), dated February 1, 1978, by and between Port and the California Inland Pilots Association, which assigned its leasehold estate to Tenant pursuant to that certain Assignment and Amendment of Lease, dated January 7, 1988, and (iii) that certain Lease (referred to as Lease No. L-11485), dated August 1, 1989, by and between Port and Tenant (all of the foregoing leases shall be referred to collectively as the "Prior Lease" and the premises leased thereunder shall be

referred to collectively as the "Prior Premises").

C. Section 2 of the Lease provides that the Lease shall commence and be effective on the "Commencement Date" which shall be the date on which the following, among other things, shall have occurred: (i) the procurement by Tenant of financing for Phase I of the Tenant Improvements at commercially reasonable terms; and (ii) the issuance of a Building Permit by Port allowing construction of Phase I of the Tenant Improvements. Section 2 of the Lease further provided that if the aforementioned requirements are not satisfied on or before July 30, 1995, the Lease shall not become effective and all terms and conditions stated therein shall become null and void.

D. Despite Tenant's best efforts to satisfy the above-stated requirements, Tenant has been unable to obtain financing at commercially reasonable terms, and therefore Tenant was unable to obtain a building permit from Port by July 30, 1995. Tenant and Port believe that it is reasonable to expect Tenant to obtain financing at commercially reasonable terms by June 30, 1996.

E. The original term of the Prior Lease expired on or before November 1, 1994. However, Tenant remains in possession of the Prior Premises under the Prior Lease, and both parties desire to extend the term of the Prior Lease until the Commencement Date of the Lease, or until Section 2 of the Lease renders the Lease null and void, which ever is earlier.

F. Tenant and Port also desire to amend Section 2 of the Lease to extend the date by which Tenant must obtain financing for the Phase I Tenant Improvements to June 30, 1996.

G. Tenant has received preliminary financing commitments from Bank of America Community Development Bank ("BofA") and the U.S. Small Business Administration ("SBA") for construction of the Tenant Improvements under the Lease, to be secured by Tenant's leasehold interest. As a condition to the financing, BofA and the SBA have requested the Port to consent to the encumbrance of the Lease and to amend the Lease to provide certain protections to the Lenders.

H. If not defined herein, all capitalized terms in this Amendment shall have the same meaning as in the Lease.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto

agree as follows:

AGREEMENT

1. Extension of Prior Lease. The Prior Lease is hereby amended to extend the term of the Prior Lease to the Commencement Date of the Lease or until Section 2 of the Lease renders the Lease null and void, whichever is earlier.

2. Reaffirmation of Lease. Port and Tenant hereby reaffirm and review all of the terms and conditions of the Lease, as amended hereby.

3. Superseding of Prior Lease. The last sentence of Section 1.1, "Prior Lease," of the Lease is hereby amended to read as follows:

> Port and Tenant each acknowledge and agree that this Lease shall supersede in its entirety the Prior Lease effective as of the "Commencement Date," as hereinafter defined.

4. Change in Date By Which Conditions Precedent to Lease Effectiveness Must Occur. Section 2 of the Lease is hereby amended to read as follows:

> 2. **Term of Lease.** This Lease shall commence and be effective on the "Commencement Date" which shall be the date upon which all of the following have occurred: (i) the issuance of a Conditional Use Permit by the Planning Department of the City in form and substance satisfactory to Port and Tenant in each of their sole discretion allowing use of the Premises as contemplated herein, (ii) the issuance of a permit by the Bay Conservation and Development Commission in form and in substance satisfactory to Port and Tenant in each of their sole discretion allowing construction of the Tenant Improvements and use of the restaurant and banquet facility contemplated herein; (iii) the adoption of an ordinance of the San Francisco Board of Supervisors approving this Lease; and (iv) the procurement by Tenant of financing for Phase I of the Tenant Improvements at commercially reasonable terms, as evidenced by a commitment letter or loan authorization issued by a qualified lender. If the aforementioned requirements are not met on or before June 30, 1996, this Lease shall not become effective and all terms and conditions stated herein shall be null and void. Tenant shall use its best efforts to satisfy all of the above-stated conditions on or before June 30, 1996. The terms of this Lease shall terminate on the twentieth (20th) anniversary of the

Substantial Completion of the Phase I Improvements, or, if Tenant undertakes the Phase II Improvements at substantially the same time as the Phase I Improvements, then upon the substantial completion of both the Phase I and Phase II Improvements (all as defined in Section 33 hereof) ("Termination Date"), unless sooner terminated as provided for in this Lease (the "Term"). Port and Tenant shall confirm the Commencement Date and Termination Date in writing but failure to do so shall not affect the validity hereof. As used herein, "Anniversary Date" shall mean the first anniversary of the Commencement Date and each anniversary of such date thereafter; provided, however, that if the Commencement Date is other than the first day of a month, then the first Anniversary Date shall be the first day of the thirteenth (13th) month following the Commencement Date.

5. Consent to Encumbrance. Port and Tenant affirm for the benefit of BofA and SBA that (i) BofA and SBA are approved "Lenders" for purposes of Section 20 of the Lease regarding Security Interests, as amended hereby, (ii) Port and Tenant's obligations thereunder shall be for the benefit of BofA and SBA, and their respective successors and assigns and (iii) BofA and SBA and their respective successors and assigns each shall have all of the rights of the "Lender" provided thereunder. Port and their respective successors and assigns consents to the following encumbrance of the Lease by BofA and SBA:

(a) Tenant's encumbrance of Tenant's Leasehold by a Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing ("BofA Deed of Trust I") in favor of BofA to secure a note in the principal sum of One Million Two Hundred Seventy-Four Thousand Two Hundred and Fifty Dollars ($1,274,250) made by Tenant, and other obligations set forth in BofA Deed of Trust I which will be recorded in the official Records of San Francisco County;

(b) Tenant's encumbrance of Tenant's Leasehold by a deed of trust ("SBA Deed of Trust") and a Collateral Assignment of Tenant's Interest in Lease ("Collateral Assignment") (the "SBA Security Documents") in favor of the SBA to secure a note made by Tenant in the maximum principal amount of One Million Dollars ($1,000,000) (the "SBA Note") and other obligations set forth in the SBA Deed of Trust which will be recorded in the Official Records of San Francisco provided, however, that such encumbrance shall only be permitted to the extent it replaces BofA Deed of Trust II in its entirety;

(c) Tenant's encumbrance of Tenant's Leasehold by a Deed of Trust With

Assignment of Rents, Security Agreement and Fixture Filing ("BofA Deed of Trust II") in favor of BofA to secure a note in the principal sum of Nine Hundred Sixty-Seven Thousand Dollars, ($967,000), made by Tenant, and other obligations set forth in BofA Deed of Trust II which will be recorded in the Official Records of San Francisco County;

(d) Tenant's encumbrance of Tenant's Leasehold by a Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing ("BofA Deed of Trust III") in favor of BofA to secure a note in the principal sum of One Hundred Thousand Seventy-four Dollars, ($1,074,000) made by Tenant, and other obligations set forth in BofA Deed of Trust III which will be recorded in the Official Records San Francisco;

(e) The terms and purposes of the notes, and any extensions or reals thereof, and other obligations secured by BofA Deed of Trust I, BofA Deed of Trust II, and BofA Deed of Trust III (collectively, the "BofA Deeds of Trust");

(f) the terms and purposes of the SBA Note and any extensions or renewals of the SBA Note.

6. Insurance. Section 16.3(c) of the Lease is hereby amended to read in its entirety as follows:

> (c) Except as otherwise provided in Section 20(s) third, to compensate Tenant or any mortgagee of Tenant, as their respective interests may appear, for the remaining unamortized Certified Construction Costs for the Tenant Improvements, which amount shall be amortized on a straight line basis over a seven year period for each phase of the Tenant Improvements and shall in no event exceed Two Million Dollars ($2,000,000.00) at commencement of the amortization period for Phase One less any Improvement Credits taken by Tenant pursuant to Section 33, or One Million Four Hundred Thousand Dollars ($1,400,000.00) at commencement of the amortization period for Phase Two, less any Improvement Credits taken by Tenant pursuant to Section 33.

7. Assignment and Subletting. New Sections 19.10 and 19.11 are hereby added to the Lease to read as follows:

19.10 Assignments by Lenders. In the event of an assignment of this Lease following an assignment made by a means described in Section 20(o) hereof ("Assignment by Lender"), the lender's assignee ("Lender's Assignee") shall be subject to all of the terms and conditions of this Lease, including payment of Rent. Notwithstanding the foregoing, any Lender's Assignee shall immediately (but in no case more than thirty (30) days after the effective date of the Assignment by Lender) submit to Port the notice and information required in Section 19.3 hereof and failure to provide such information shall render this Lease voidable at the option of Port. Port shall have sixty (60) days after receipt of such Section 19.3 notice and information to give or deny its written consent to the Assignment by Lender in accordance with the standards set forth in Section 19.4 hereof. In the event Port withholds its consent to such Assignment by Lender, the Lender's Assignee shall have ninety (90) days after Port's notice to obtain Port's consent to a subsequent assignee and to assign this Lease to such approved person or entity. In the event that Port has not consented to the Assignment by Lender or any subsequent assignment from Lender's Assignee within one hundred eighty days (180) after the effective date of the Assignment by Lender, this Lease shall be voidable at the option of the Port. Failure of Port to respond within the time periods set forth herein shall be deemed consent as to each particular request only.

19.11 Pre-Approval by Port. In the event any potential Lender's Assignee requests Port's consent to the assignment prior to the effective date of the assignment, Port shall accept and consider such requests that are made in conformance with the application requirements of Section 19.3 hereof. Port shall use its best efforts to respond with its approval or disapproval of such applications within thirty (30) days of receipt by Port in accordance with the standards set forth herein under Section 19.4, but failure to so respond shall not be deemed to be consent thereto. Any such preapproval granted by Port shall be deemed consent to such assignment in the event that such approved potential assignee succeeds to the lender's interest under an Assignment by Lender.

8. Security Interests. Section 20 of the Lease is hereby amended to include the addition of the following provisions for the sole benefit of BofA and SBA:

(o) **Assignment of the Lease.** An assignment of the Lease made in connection with the BofA and SBA Security Documents may be

made without Port's consent if such assignment is made to BofA or SBA or an affiliate of BofA or SBA by any of the following:

(i) by judicial or nonjudicial foreclosure or deed in lieu of foreclosure under the SBA Deed of Trust and the BofA Deeds of Trust; or

(ii) by exercise of rights under the Collateral Assignment including assignment in lieu of foreclosure.

Any other assignment of the Lease made by SBA or BofA following an assignment by a means described in (i) or (ii) above may be had without Port's prior written consent, but shall be further subject to the provisions of Sections 19.10 and 19.11 hereof.

(p) **New Lease.** If the Lease shall terminate for any reason or be rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, BofA or SBA shall have the right to enter into a lease ("New Lease") of the Premises, exercisable by written notice to Port within sixty (60) days after the effective date of such termination. The term of such New Lease shall begin on the date the Lease terminates and shall continue for the remainder of the existing Lease term. Such New Lease shall otherwise contain the same terms and conditions as those set forth in the Lease, as amended by this Lease Amendment, except for requirements which are no longer applicable or have already been performed, provided that SBA shall have remedied all defaults on the part of Tenant which are susceptible of being remedied by the payment of money, and provided further that such New Lease shall require the Tenant thereunder promptly to commence, and expeditiously to continue, to remedy all other defaults on the part of Tenant to the extent susceptible of being remedied. It is the intention of the parties to this Lease Amendment that such New Lease shall have the same priority as the Lease, relative to other rights or interests to or in the fee estate in the Lease Property, and Port covenants to discharge or cause to be subordinated to such New Lease any lien or encumbrance which is subject to the Lease. The provisions of this Section shall survive the termination of the Lease and shall continue in full force and effect to the same extent as if this Section were a separate and independent contract among Port,

Tenant and SBA or BofA. From the date on which SBA or BofA shall serve upon Port notice of the exercise of its right to a Lease, SBA or BofA may use and enjoy the Leased Property without interference by Port. Notwithstanding the foregoing, if the indebtedness secured by BofA Deed of Trust I is outstanding as of the date of termination of the Lease, SBA may enter into the New Lease in accordance with the provisions of this subparagraph (o) only if as a condition precedent, SBA has agreed in writing with BofA to execute and recorda deed of trust that meets the following requirements:

(1) In form and substance, it must be satisfactory to BofA, encumber SBA's leasehold interest under the New Lease, and fully secure any existing indebtedness secured by BofA Deed of Trust I.

(2) It must have the same priority relative to any other rights or interests in the fee estate in the Premises which existed as of the date of recordation of BofA Deed of Trust I as BofA Deed of Trust I bore to those other rights and interests, and must be senior to any rights, interests, liens or encumbrances which are subsequent to the recordation of BofA Deed of Trust I.

If SBA cannot or does not agree to execute and record a deed of trust meeting the foregoing requirements, then all rights granted to SBA under this subparagraph (p) shall be fully exercisable by BofA and its successors and assigns.

(q) **Rights of SBA and BofA Regarding Merger of Lease.** Port agrees that the exercise of its rights under the Lease in case of an event of default shall not, without SBA's and BofA's prior written consent, result in the merger of Port's estate with Tenant's estate under the Lease.

(r) **No Surrender or Amendment.** As long as the indebtedness under the Deeds of Trust or Security Documents remains outstanding, Tenant shall not voluntarily surrender, nor shall Port accept a voluntary surrender of the Lease or the Leasehold without BofA's and SBA's prior written consent. Any amendment or modification to this Lease, or any waiver of any terms of the Lease, made without BofA's or SBA's written consent, shall not be binding on BofA or SBA or any purchaser

acquiring the Lease from BofA or SBA, or pursuant to the exercise of BofA's or SBA's rights under the Deeds of Trust or the SBA Security Documents. Notwithstanding the foregoing, upon an assignment of the Lease or a Lease by BofA or SBA, Port will consent to the purchase money encumbrance of the assignee's leasehold interest on terms substantially similar to the terms of the Lease as amended.

(s) **Insurance.** Notwithstanding any Lease provision to the contrary, including without limitation, Section 16.3(e) Tenant shall carry fire and extended coverage insurance policies covering the building or buildings constructed on the Leased Premises with a loss payable clause in favor of BofA and SBA, as their respective interests may appear, and any disposition of insurance proceeds in case of loss shall be subject to the rights of BofA as provided in the BofA Deed of Trust I so long as the indebtedness secured thereby is outstanding, and thereafter shall be subject to the rights of SBA as provided in the SBA Deed of Trust so long as the indebtedness secured thereby is outstanding. Tenant shall provide a copy of the policy to BofA and SBA.

(t) **Port's Waiver of Lien Rights.** Port waives the right to obtain, for any liability of Tenant that arises, accrues or is the subject of legal action while any of the BofA Deeds of Trust or the SBA Deed of Trust is in existence, a lien on any machinery, equipment or furniture of Tenant that may constitute a part of the fixtures located upon the Leased Premises.

(u) **Curable Defaults.** So long as any indebtedness secured by the BofA Deeds of Trust or the SBA Deed of Trust is outstanding, the Port may not terminate the Lease because of any default or breach thereunder on the part of Tenant if either BofA or SBA:

(1) Within 30 days after service of written notice on BofA and SBA by the Port of Port's intention so to terminate, notifies the Port in writing whether it intends to cure such default or cause such default to be cured, and whether it intends to commence proceedings to acquire the leasehold by foreclosure or otherwise; and

(2) Within 30 days after delivery of BofA or SBA of the notice required under subpart (1) above, cures the default

or breach if it can be cured by the payment or expenditure of money provided to be paid under the terms of the Lease, or if the default or breach is not so curable, within 60 days after delivery by BofA or SBA of the notice required under subpart (1) above, commences, or causes the trustee under any of the BofA Deeds of Trust or the SBA Deed of Trust to commence, and thereafter to pursue diligently to completion, steps and proceedings to foreclose on the Leasehold covered by any said Deed of Trust; and

(3) Thereafter keeps and performs all of the covenants and conditions of the Lease requiring the payment or expenditure of money by the Lessee until such time as the Leasehold is sold upon foreclosure pursuant to any such Deed of Trust, or is released or reconveyed thereunder, or is transferred upon judicial foreclosure or by an assignment in lieu of foreclosure.

(v) **Personal Liability.** BofA or SBA shall not become personally liable for the performance or observance of any covenants or conditions to be performed or observed by Tenant unless and until BofA or SBA becomes the owner of the Leasehold whether by the exercise of a remedy provided in the BofA Deeds of Trust or SBA Security Documents, assignment in lieu of foreclosure, or otherwise, or enters into a New Lease with Port pursuant to Section 20(p) above. After becoming owner of the Leasehold or entering into such New Lease, BofA or SBA shall be personally liable for the performance and observance of such covenants and conditions for so long as BofA or SBA owns the Leasehold or is the Tenant under a New Lease.

8. Tobacco Products Ban. The following paragraph is added as Section 27.4 to the Lease:

Tobacco Products Advertising Ban. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject to this Lease. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the

health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

9. General Provisions.

9.1 **Further Assurances.** Port and Tenant each agree to execute any and all documents and agreements reasonably requested by the other party to further evidence or effectuate this Amendment.

9.2 **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

9.3 **Reaffirmation.** Except as amended hereby, all of the terms and conditions of the Prior Lease and the Lease shall remain in full force and effect and unchanged.

9.4. **Conflicts.** In case of any conflict between any term or provision of this Amendment and the Lease, the terms or provision of this Amendment shall govern.

9.5 **Effect of This Lease Amendment.** To the extent that this Lease Amendment gives additional rights to SBA and BofA, the Lease is amended and modified for the benefit of SBA and BofA only.

9.6 **Construction.** In this Amendment, the singular number includes the plural whenever the context so requires.

IN WITNESS WHEREOF, this Amendment has been executed at San Francisco, California as of the date first set forth above.

PORT	TENANT
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION	BUNDOX RESTAURANT, INC., a California Corporation
By: _____	By: _____
FREDERICK D. WHITE Director, Tenant and Maritime Services	AL FALCHI President

APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

By:_____
NEIL H. SEKHRI
Deputy City Attorney

Port Commission Resolution
No._____

Board of Supervisors Ordinance
No. _____

Acknowledged and Agreed

"BofA"
BANK OF AMERICA

_____

By:_____
Title:_____

"SBA"
SMALL BUSINESS ADMINISTRATION

_____

By:_____
Title:_____

G:\NHS\WATERFRO\LSE-AMEN.V4

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

February 5, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Adoption of Finding of Negative Declaration and Approval of Lease with Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc. for a 20 year 9-month term with three 5-year options for a maritime recreation center at Pier 38.

DIRECTOR'S RECOMMENDATION: ADOPT FINDING OF NEGATIVE DECLARATION AND APPROVE LEASE AGREEMENT WITH CARL ERNST, JR. AND PIER 38 MARITIME RECREATION CENTER, INC.

BACKGROUND

Carl Ernst, Jr. and Pier 38 Recreation Center, Inc. (jointly and severally, "MRC") approached the Port desiring to lease substantially all of Pier 38 in order to establish a maritime recreation center. Mr. Ernst has over twenty years of recreational enterprise experience. He has operated marinas and boatyards in California at Lake Tahoe and Montara. Over two years of market research and concept analysis preceded his approaching the Port with this proposal. On August 29, 1995, the Port Commission adopted a resolution (Resolution 95-70) approving an Exclusive Right to Negotiate Agreement with MRC. A copy of the Memorandum and Resolution 95-70 is attached for your review and reference.

Staff has negotiated the terms of a proposed lease agreement with MRC consistent with the Port Commission's previously approved resolution.

The Pier 38 Maritime Recreation Center will offer dry boat storage and boat launching, small boat rental, transient berthing, new and used boat sales, a maritime chandlery, a casual dining snack bar and full service restaurant, related customer parking and general administrative offices and public facilities and enhanced public access. The proposed uses are consistent with the uses

currently permitted for this site. More importantly, the use as a maritime recreation center is consistent with the uses permitted and encouraged under the Draft Waterfront Land Use Plan. Pier 38 would be transformed into an active, inviting location for residents and visitors to gather and enjoy the waterfront.

The existing condition of the Pier 38 facility is poor. The Port Maintenance and Engineering Staff has reported that there are significant structural problems related to the south wall and the pier and roof substructures.

MRC would perform renovations of Pier 38. The MRC business plan envisions expenditures exceeding $4.2 Million Dollars allocated as follows: $1,595,000.00 for tenant improvements and repairs, including commercial and office build outs, boat storage facilities and public access enhancement; $1,350,000.00 for structural and facility repairs, including repairs to the roof and walls and needed piling replacement, (some of which may be repairs otherwise the obligation of the Port) and $1,255,000.00 for fixtures and equipment. These improvements will be financed by a combination of Tenant equity and State Department of Boating and Waterways and private loans.

Pursuant to Port Commission Leasing Policy adopted August 22, 1979, and subsequently amended by Resolution 80-95 on September 10, 1980, subsection 10, the Port may enter into negotiations with a tenant without competitive bid when competitive bid is impractical or impossible and the property is proposed to be used for maritime purposes. The proposed use is a maritime-related use. In addition, staff believes that issuing a Request for Proposals for this Facility would prove impractical and impossible for the following reasons:

- The physical condition of the Pier 38 Facility requires substantial repairs. Any bid proposal would require prospective users to underwrite the costs of needed structural, roof and other repairs which would preclude sufficient interest from qualified prospective bidders.

- The range and combination of maritime and related uses in the proposed use at Pier 38 are so unique as to preclude from the field of potential bidders any other users with the interest and ability to undertake the project other than MRC.

- The Pier 38 Facility has been vacant for over five years. The Port's direct marketing efforts over the past 3 years have resulted in no other proposals for other acceptable maritime or permitted uses for Pier 38 either under the existing zoning or the Draft Waterfront Plan.

Because the above stated reasons make competitive bidding impractical, competitive bid of this Lease is not required under Port Commission policy nor under San Francisco Charter or Administrative Code Section 2.6-1.

A Final Negative Declaration for the project was adopted and issued by the Department of City Planning on February 2, 1996.

The Final Negative Declaration is attached hereto for review. The Final Negative Declaration found that there is no substantial evidence that the proposed maritime recreation center could have a significant effect on the environment. No measures of mitigation are required.

Terms

Premises

The Premises is comprised of 68,000 useable square feet of shed space, 28,000 square feet of pier apron and stringer, 7,800 square feet of bulkhead office, and the non-exclusive use of 180,000 square feet of water space.

Uses

Permitted Uses

A maritime recreation center limited to dry boat storage and launching facilities; transient berthing for not more than 72 hours per visit; small boat rental; maritime recreational equipment rental; new and used boat sales occupying not more than 7,500 square feet; a maritime chandlery occupying not more than 2,500 square feet; Casual Dining and Full Service Dining including therein the sale of alcoholic beverages for on-site consumption occupying not more than 5,000 square feet (No sales of alcoholic beverages for off-site consumption shall be permitted); general and administrative offices for related functions; customer parking for a maximum of 100 vehicles; related support locker rooms.

Prohibited Uses

The Lease will prohibit the use of the Premises for boat excursion services, site seeing tours, dinner or cocktail cruises, water taxi service, exercise, health spas or fitness centers, video arcades or electronic game rooms, R.V. storage, and public parking for other than customers or guests and non project-related office use.

Term

The Term is twenty (20) years and nine (9) months with three 5-year Options. The first nine months allow for initial build out of the Premises and for rent up of dry boat storage spaces. Options are provided in event of a delayed "1031" Exchange. (IRS rules allow for an "exchange" of fee interests and leasehold interests provided that the leasehold interest is for not less than 31 years.) If the tenant fails to effect the anticipated exchange within the first four years of the Term, the Options expire.

Right of Early Termination

The Tenant will have the one time right to terminate at the end of the tenth year of the Term or at other times if the Port fails to undertake Port maintenance items and the Tenant chooses not to undertake such repairs. The Port may terminate if MRC fails to secure all necessary governmental permits within the first 6 months of the Term or if, at the end of the third year, the Tenant has not made the minimum required investment as set forth below or if, upon written notice by the Port, the Tenant fails to repair a hazardous/life-safety condition which is either the Port's responsibility or the Tenant's responsibility to repair.

Base Rent
The Base Rent schedule during the first 10 years of the Term is designed to guarantee the Port a cash flow equivalent to the net present value of a Base Rent equal to $27,500 per month as if it had been adjusted by annual CPI increases. Within this $27,500 per month Base Rent, S22,000 is allocated to that portion of the Premises not used for restaurant uses (" Maritime Base Rent") and $5,500.00 is allocated to the areas dedicated to Casual and Full Service Dining ("Restaurant Base Rent") (cumulatively "Base Rent")

The Base Rent schedule is structured as follows:

For the Preliminary Term (9 months) One Thousand Dollars ($1,000.00) per calendar month.

For the First Lease Year: Five Thousand Five Hundred Dollars ($5,500.00) per calendar month;

For the Second Lease Year: Eleven Thousand Dollars ($11,000.00) per calendar month;

For the Third Lease Year: Sixteen Thousand Five Hundred Dollars ($16,500.00) per calendar month;

For the Fourth Lease Year: Twenty One Thousand Five Hundred Dollars ($21,500.00) per calendar month;

For the Fifth Lease Year: Twenty Seven Thousand Dollars ($27,000.00) per calendar month;

For the Sixth Lease Year:) Thirty Two Thousand Dollars ($32,000.00) per calendar month;

For the Seventh Lease Year: Thirty Seven Thousand Five Hundred Dollars ($37,500.00) per calendar month;

For the Eight, Ninth and Tenth Lease Years: Forty Eight Thousand Dollars ($48,000.00) per calendar month;

For the Eleventh through the Twentieth Lease Year: A Maritime Base Rent of Twenty Two Thousand Dollars ($22,000.00) adjusted by the CPI from the Lease Commencement Date (1996), plus an amount equal to the fair market rental value for the "Restaurant Base Rent" to be agreed upon by the parties or failing an agreement, to be determined by binding arbitration.

Base Rent Adjustments
In the eleventh year, monthly Maritime Base Rent will be based on a ten year CPI adjustment on $22,000.00. The Restaurant Base Rent will be adjusted to fair market value by mutual agreement. If the Port and Tenant fail to agree on the adjusted Restaurant Base Rent, the matter will be determined by arbitration. This procedure will be used to adjust the Restaurant Base Rent

every five years. In subsequent and intervening years, all Base Rents will be adjusted annually by CPI adjustment.

Opportunity Rent

In order to insure that the actual cash flow equals the then net present value of $27,500 per month over a ten year period, at the end of the tenth lease year an "Opportunity Rent" will be payable by MRC which will be equal to the difference between the net present value of all rents actually received as compared to the net present value of $27,500 per month, as if adjusted annually by the actual CPI increases during the first ten years plus any percentage rents that would have been payable given that assumed Base Rent.

Option Rent

In the option periods, the Base Rent will be the greater of 115% of the average Base Rents and Percentage Rents for the previous three years or the Port's minimum rent for as improved, similarly situated facilities per published Port schedule.

Percentage Rent

Percentage Rent will be payable at a rate of 7% of Gross Maritime Sales and boat sale brokerage fees versus the Maritime Base Rent. New and used boat sales will be excluded from the definition of Gross Maritime Sales. Percentage Rent for food sales will be payable at a rate of 7% for full service dining and 11% for casual dining versus the Restaurant Base Rent.

Percentage Rent Adjustment

The applicable percentages are subject to adjustment every five years and are to be determined at the Port's sole and reasonable discretion. The actual increase or decrease can be no more than one (1) percentage point per adjustment period per revenue type. In the eleventh year and for any option period, if the parties fail to agree on the rate, the Restaurant Percentage Rent shall be determined by arbitration.

Maintenance Obligations

The Port agrees to maintain the pier substructures and the structural portions of the roof and exterior walls and to maintain the roof and walls in a water tight condition. All other items of maintenance and repair are the sole obligation of MRC.

Should the Port determine not to undertake such maintenance and/or repairs, the Lease provides that the Tenant's sole remedy is to either assume the repairs and/or maintenance at its own expense subject to the receipt of rent credits for the cost of such undertakings, or terminate the Lease. The Port can void any such termination by making the needed repairs.

Facility Improvements

Required Tenant Expenditure

During the first 3 years of the Term, the Tenant must spend not less than $300,000.00 for repairs that would otherwise be the obligation of the Port (e.g. roof, roof structure, pier substructure, exterior walls, apron substructure) and not less than $200,000.00 for tenant improvements.

Other Tenant Investments

MRC anticipates investing an additional $3.7 Million Dollars allocated as follows:

- $1,050,000.00 for structural and other facility repairs;
- $1,395,000.00 tenant improvements and office and commercial build out;
- $1,255,000.00 in trade fixtures and equipment.

Rent Credits

Tenant Improvements

The tenant shall be entitled to rent credits for 50% of the cost to install or construct capitalizable tenant improvements (excluding furniture, fixtures and equipment) up to a maximum available rent credit of $1,000,000.00 for tenant improvements and up to $200,000.00 for hazardous materials remediation and abatement over the Term provided that the Port first approves such improvements or work.

Repairs Undertaken on Behalf of the Port

The Tenant shall be entitled to receive a dollar for dollar rent credit for the cost of undertaking repairs otherwise the obligation of the Port (e.g., roof, roof substructure, pier substructure, exterior walls, apron substructure, etc.) provided that the Port first approves such repairs.

Application of Rent Credits

In no event shall rent credits available for any one month be greater than one half of the Base Rent otherwise payable to the Port for that same month.

Assignment and Subletting

Subject to Port's reasonable approval of assignment or subletting, the Port will receive 50% of the sums received by the Tenant in excess of rent less subletting or assignment expenses.

Affirmative Action

An Affirmative Action Plan, as approved by the Port, for construction and hiring will be incorporated in the Lease. Thirty percent of all construction costs must inure to benefit MBE, WBE, and DBE contractors.

SUMMARY

The nature of the proposed use, a full service maritime recreation center and the anticipated improvements and repairs to the Pier 38 facility, together with enhanced public access to the waterfront, are consistent with the proposed Waterfront Land Use Plan and represent a significant benefit to the Port, City and County of San Francisco.

Prepared by: Frederick D. White, Director, Tenant and Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **96-20**

WHEREAS, Charter Section 3.581 grants to the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc. (collectively "MRC") have proposed to develop a full service maritime recreation center at Pier 38; and

WHEREAS, The proposed use of Pier 38 as a maritime recreation center is consistent with the uses permitted in the Draft Waterfront Land Use Plan previously approved by the Port Commission;

WHEREAS, Staff has negotiated all of the terms and conditions of a proposed lease with MRC; and

WHEREAS, On December 21, 1995, the Department of City Planning issued for public review and comment a Preliminary Negative Declaration, Case No. 95-546E for the proposed Pier 38 Maritime Recreation Center and on February 2, 1996 the Negative Declaration was finalized; and

WHEREAS, The Port Commission has determined that given the unique nature of the use, and for the reasons set forth in the Memorandum to the Port Commission for Agenda Item 5C for the Port Commission meeting on February 13, 1996, a request for proposals for a Lease would prove both impractical and infeasible; now therefore, be it

RESOLVED, That this Port Commission has considered and reviewed the Final Negative Declaration and hereby adopts said Final Negative Declaration and hereby finds that the Pier 38 Maritime Recreation Center described therein will have no significant impact on the environment, and adopts and incorporates herein by reference thereto, the findings of the Final Negative Declaration, Case No. 95-546E, issued by the Department of City Planning, a copy of which is on file with the Secretary of the Port Commission; and be it further

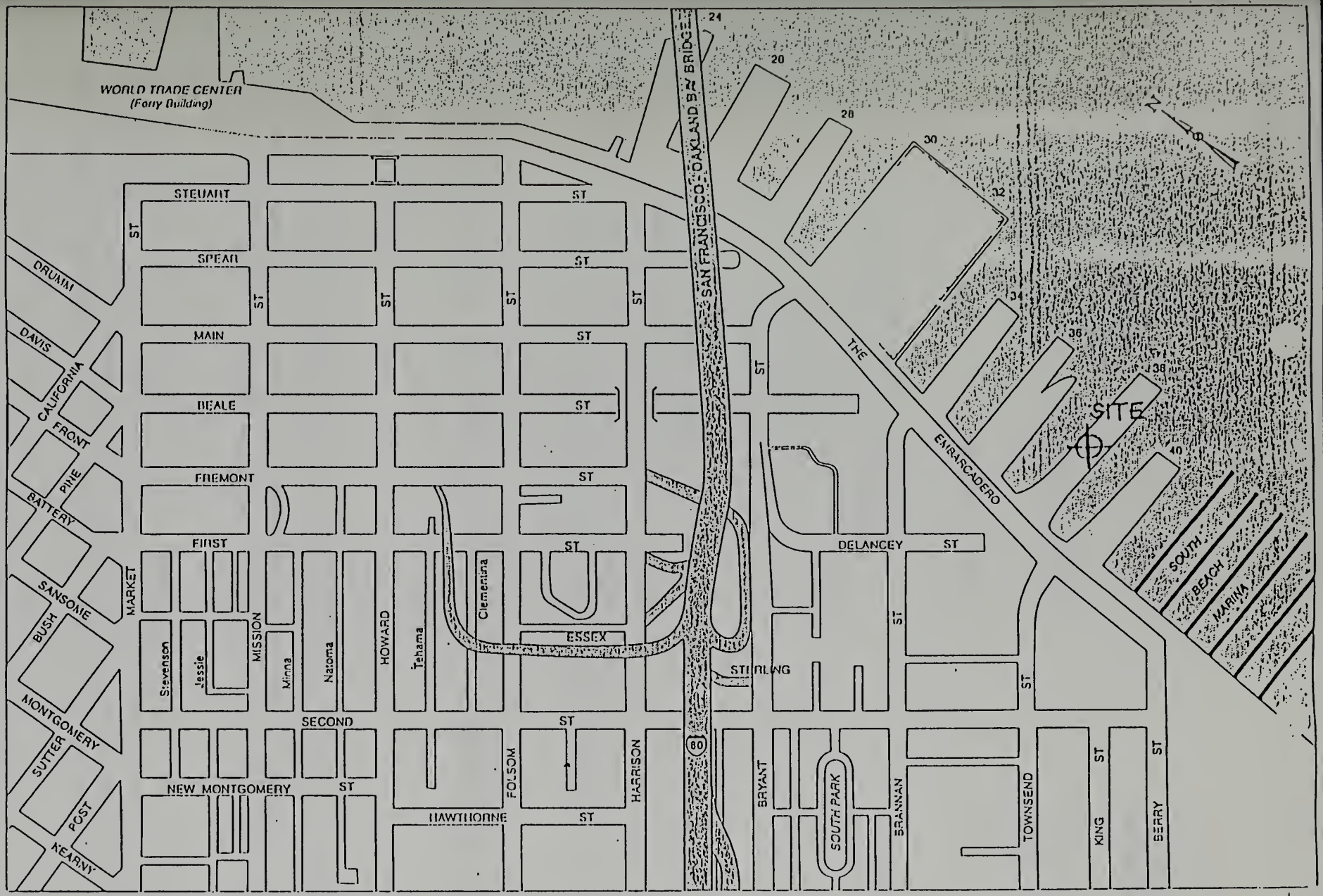
RESOLVED, That the San Francisco Port Commission hereby approves entering into Lease No. L-12120 with Carl Ernst Jr. and Pier 38 Maritime Recreation Center, Inc. substantially on the terms and conditions outlined in the Memorandum to the Port Commission for Agenda Item 5C for the Port Commission meeting on February 13, 1996 and as more fully contained in said lease; and further, be it

RESOLVED, that the Executive Director is hereby directed to forward Lease No. L-12120 to the Board of Supervisors of the City and County of San Francisco for approval by ordinance pursuant to City Charter Section 7.402-1.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 13, 1996.

_____
Secretary

I:\WP51\PIER38MA.MEM\ND\jef\2-05-96



Korve Engineering

Figure 1
PROJECT LOCATION

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 278940 PSF UR
Fax 415 274 0528
Cable SFPORT COMM
Writer

MEMORANDUM

August 22 1995

TO: MEMBERS, PORT COMMISSION
Hon. Preston Cook, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Michael Hardeman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of an Exclusive Right to Negotiate Agreement with Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc. for a 20 year Lease with three 5-year Options for a maritime recreation center at Pier 38.

DIRECTOR'S RECOMMENDATION: APPROVE EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT WITH CARL ERNST, JR. AND PIER 38 MARITIME RECREATION CENTER, INC.

BACKGROUND

Carl Ernst, Jr. and Pier 38 Recreation Center, Inc. (collectively "MRC") have approached the Port desiring to lease substantially all of Pier 38 in order to establish a maritime recreation center. The Port's Tenant & Maritime Services Staff have been meeting with the representatives of MRC to develop and refine the terms and conditions of a proposed 20 year Lease with three 5-year Options.

As envisioned, the Pier 38 Maritime Recreation Center would consist of dry boat storage and launching, small boat rental, transient berthing, new and used boat sales, a maritime chandlery, a casual dining snack bar and full service restaurant, ancillary related customer parking and general administrative offices and public facilities and access. The proposed uses are

consistent with the uses currently permitted for this site. More importantly, the use as a maritime recreation center is consistent with the uses permitted and encouraged under the Draft Waterfront Land Use Plan. Pier 38 would be transformed into an active, inviting location for residents and visitors to gather and enjoy the Waterfront.

MRC projects the creation of 30 new jobs in the City with an annual payroll of over $1,000,000.00. Taxable Annual Sales are projected to gross from an initial level of $1,200,000.00 in 1996 to over $5,400,000.00 by 2005. The MRC Business Plan anticipates that the Lease would generate $8,000,000.00 in rent over the initial twenty year period. In addition, MRC would perform significant renovation of Pier 38 to enhance and prolong its useful life. The Business Plan envisions expenditures exceeding $4.2 Million Dollars allocated as follows: $1,595.000.00 for tenant improvements and repairs, $1,350,000.00 for structural and facility repairs, some of which may be repairs otherwise the obligation of the Port and $1,255,000.00 for fixtures and equipment.

Pursuant to Port Commission Leasing Policy adopted August 22, 1979, and subsequently amended by Resolution 80-95 on September 10, 1980, subsection 10, the Port may enter into negotiations with a tenant without competitive bid when competitive bid is impractical or impossible and the property is proposed to be used for maritime purposes. The proposed use is a maritime-related use. In addition, staff believes that issuing a Request for Proposals for this Facility would prove impractical and impossible for the following reasons:

- The physical condition of the Pier 38 Facility requires substantial repairs. Any bid proposal would require prospective users to underwrite the costs of needed structural, roof and other repairs which would preclude sufficient interest from qualified prospective bidders.

- The range and combination of maritime and related uses in the proposed use at Pier 38 are so unique as to preclude from the field of potential bidders any other users with the interest and ability to undertake the project other than MRC.

- The Port's marketing efforts over the past 3 years have resulted in no other proposals for other acceptable maritime or permitted uses for Pier 38 either under the existing zoning or the Draft Waterfront Plan.

MRC has proposed that the Port grant an Exclusive Right to Negotiate Agreement (Attachment A) commencing August 30, 1995 for a 120-day period to allow the parties to finalize all of the terms and conditions of the proposed lease and to allow MRC to gain California Environmental Quality Act (CEQA) approval from the City Office of Environmental Review. Once CEQA approval is obtained, and the parties have successfully negotiated a lease agreement, the Lease will be calendared for Port Commission approval and then be forwarded to the Board of Supervisors. The terms and conditions of the proposed Lease are summarized below.

PARAMETERS OF LEASE

Premises

The Premises is comprised of 68,000 useable square feet (net of fire lane) of shed space, 28,000 square feet of apron, 3,600 square feet of bulkhead office, and 180,000 square feet of water space.

Uses

Permitted Uses

A maritime recreation center limited to dry boat storage and launching facilities; transient berthing for not more than 72 hours per visit; small boat rental; maritime recreational equipment rental; new and used boat sales occupying not more than 7,500 square feet; a maritime chandlery occupying not more than 2,500 square feet; Casual Dining and Full Service Dining including therein the sale of alcoholic beverages for on site consumption occupying not more than 5,000 square feet (No sales of alcoholic beverages for off-site consumption shall be permitted); general and administrative offices for related functions; customer parking for a maximum of 100 vehicles; related support locker room(s) which may include up to two (2) whirlpool baths and two (2) saunas; public access, restrooms and other public facilities.

Prohibited Uses

The Lease will prohibit the use of the Premises for boat excursion services, dinner cruises, water taxi service, exercise, health spas or fitness centers, video arcades or electronic game rooms, R.V. storage, and public parking for other than customers or guests.

Term

The Term is twenty (20) years and nine (9) months with three 5-year Options. The first nine months allow for initial build out of the Premises and for rent up of dry boat storage spaces. Options are provided in event of a delayed "1031" Exchange. (IRS rules allow for an "exchange" of fee interests and leasehold interests provided that the leasehold interest is for not less than 31 years.) If the tenant fails to affect the anticipated exchange within the first four years of the Term, the Options expire.

Right of Early Termination

The Tenant will have the one time right to terminate at the end of the tenth year of the Term or at other times if the Port fails to undertake Port maintenance items and the Tenant chooses not to undertake such repairs. The Port may terminate if MRC fails to secure all necessary governmental permits within the first 6 months of the Term or if, at the end of the third year, the Tenant does not make the minimum required investment as set forth below or if, upon written notice by the Port, the Tenant fails to repair a hazardous/life-safety condition which is either the Port's responsibility or the Tenant's responsibility to repair.

Base Rent

The Base Rent schedule during the first 10 years of the Term is designed to guarantee the Port a cash flow equivalent to the net present value of a Base Rent equal to $25,000 per month as if it had been adjusted by annual CPI's. Within this $25,000 per month Base Rent, $20,000 is allocated to that portion of the Premises not used for restaurant uses (" Maritime Base Rent") and $5,000.00 ($1.00 per sq. ft. per month) is allocated to the areas dedicated to Casual and Full Service Dining ("Restaurant Base Rent") (cumulatively "Base Rent")

The Base Rent for the first nine months is $1,000 per month. Thereafter, the Base Rent is graduated in $5,000 increments from $5,000 per month in the first full year of operation to $45,000 per month in years 8-10. It is anticipated that this "back loaded" rent schedule will provide MRC with the economic breathing room normally required of a new venture. Because of this "back loaded" schedule, it is likely that in the eleventh year, the Maritime Base Rent may actually go down.

Opportunity Rent

In order to insure that the actual cash flow equals the then net present value of $25,000 per month over a ten year period, at the end of the tenth lease year an "Opportunity Rent" will be payable by MRC which will be equal to the difference between the net present value of all rents actually received as compared to the net present value of $25,000 per month, as if adjusted by the actual CPI increases during the first ten years.

Option Rent

In the Option periods, the Base Rent will be the greater of 115% of the average Base Rent and Percentage Rent for the previous three years or the Port's minimum rent for as improved, similarly situated facilities per published Port schedule.

Base Rent Adjustments

In the eleventh year, monthly Maritime Base Rent will be based on a ten year CPI adjustment on $20,000.00. The Restaurant Base Rent will be adjusted to fair market value by mutual agreement. If the Port and Tenant fail to agree on the adjusted Restaurant Base Rent, the matter will be determined by arbitration. In subsequent years, all Base Rents will be adjusted annually by CPI adjustment.

Percentage Rent

Percentage Rent will be payable at a rate of 7% of Gross Maritime Sales and boat sale brokerage fees versus the Maritime Base Rent. New and used boat sales will be excluded from the definition of Gross Maritime Sales. Percentage Rent will be payable at a rate of 7% for full service dining and 11% for casual dining versus the Restaurant Base Rent.

Percentage Rent Adjustment

The applicable percentages are subject to adjustment every five years and are to be deteremined at the Port's sole and reasonable discretion and the actual increase or decrease can be no more than one (1) percentage point per adjustment per revenue type. In the eleventh year and for any Option period, the Restaurant Percentage Rent shall be determined by arbitration in the event the parties fail to agree on the rate.

Facility Improvements

Required Tenant Expenditure

During the first 3 years of the Term, the Tenant must spend not less than $300,000.00 for repairs that would otherwise be the obligation of the Port (e.g. roof, roof structure, pier substructure, exterior walls, apron substructure) and not less than $200,000.00 for tenant improvements.

Other Tenant Investments

MRC anticipates investing an additional $3.7 Million Dollars allocated as follows:

- $1,050,000.00 for structural and other facility repairs;
- $1,395,000.00 tenant improvements and;
- $1,255,000.00 in trade fixtures and equipment.

Rent Credits

Tenant Improvements

The tenant shall be entitled to rent credits for 50% of the cost to install or construct capitalizable tenant improvements (excluding furniture, fixtures and equipment) up to a maximum available rent credit of $1,000,000.00 over the Term provided that the Port first approves such improvements.

Repairs Undertaken on Behalf of the Port

The Tenant shall be entitled to receive a dollar for dollar rent credit for the cost of undertaking repairs otherwise the obligation of the Port (e.g., roof, roof substructure, pier substructure. exterior walls, apron substructure, etc.) provided that the Port first approves such repairs.

Application of Rent Credits

In no event shall rent credits for any one month be greater than one half of the Base Rent otherwise payable to the Port.

Assignment and Subletting

Subject to Port's reasonable approval of assignment of subletting, the Port will receive 50% of the sums received by the Tenant in excess of rent less subletting or assignment expenses.

Affirmative Action

An Affirmative Action Plan, as approved by the Port, for construction and hiring will be incorporated in the Lease. Thirty percent of all construction costs must inure to benefit MBE, WBE, and DBE contractors.

PROJECT SCHEDULE

Staff anticipates the Lease will be before the Commission for approval by years end. Upon Commission approval, the Lease will be presented to the Board of Supervisors for approval.

SUMMARY

The nature of the proposed use, a full service maritime recreation center, coupled with enhanced public access to the waterfront, represents a significant benefit to the Port, City and County of San Francisco.

Prepared by: Frederick D. White, Director, Tenant and Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 95-70

WHEREAS, Charter Section 3.581 grants to the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc. (collectively "MRC") have proposed to develop a full service maritime recreation center at Pier 38; and

WHEREAS, the proposed use of Pier 38 as a maritime recreation center is consistent with the uses permitted in the Draft Waterfront Land Use Plan previously approved by the Port Commission; and

WHEREAS, Staff has negotiated substantially all of the terms and conditions of a proposed lease with MRC; and

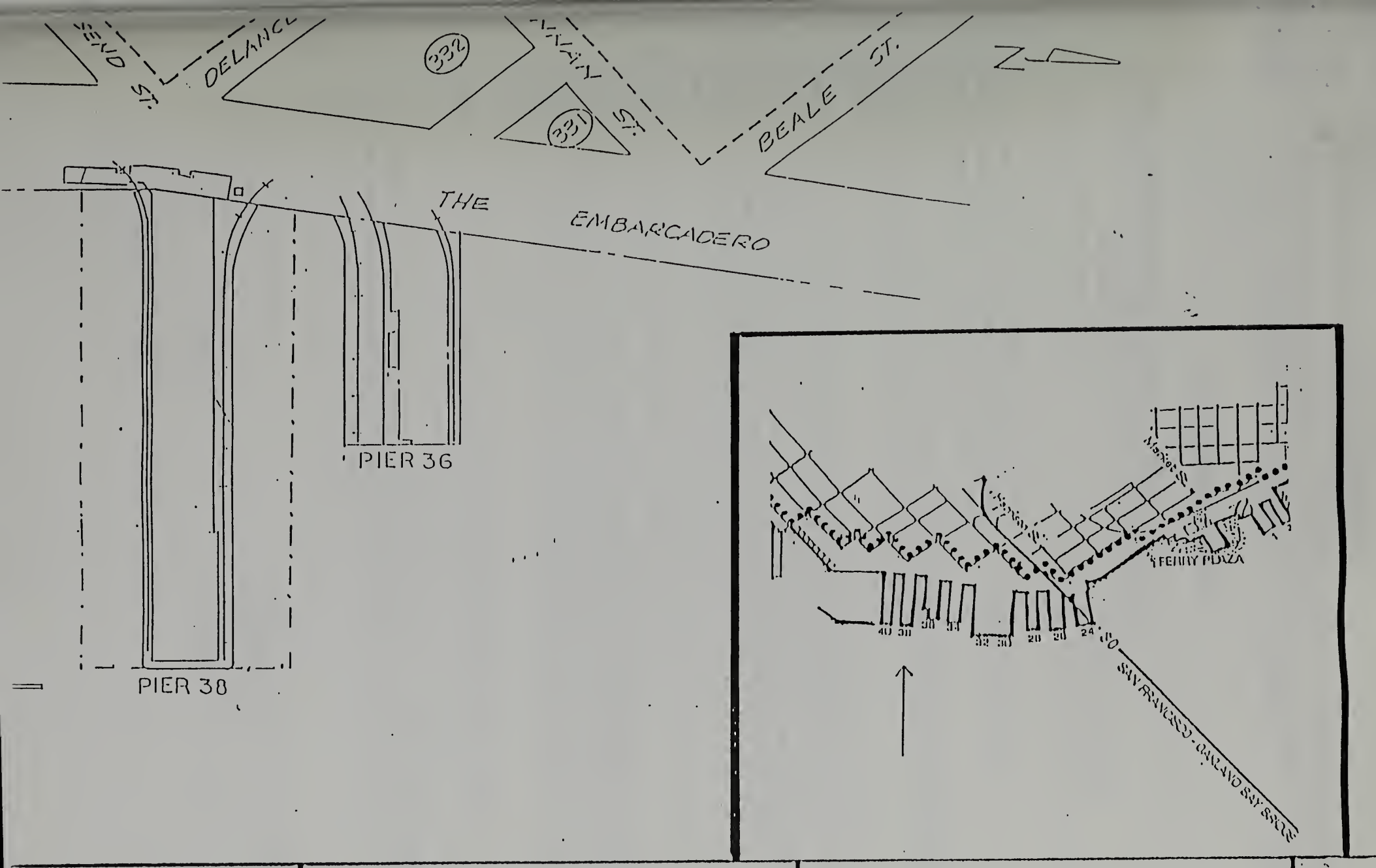
WHEREAS, MRC has requested a 120 day exclusive right to negotiate the final terms and conditions of a lease and to secure the environmental clearance required under the California Environmental Quality Act ("CEQA"); and

WHEREAS, the Port Commission has determined that for reasons set forth in the Memorandum of Agenda Item 5C for the August 29, 1995 Commission meeting, a request for proposals would prove impractical and impossible; now, therefore, be it

RESOLVED, that the San Francisco Port Commission, hereby approves an Exclusive Right to Negotiate Agreement between the Port and MRC to negotiate a lease for a full service maritime recreation center on Pier 38 upon final terms and conditions to be approved by the Port Commission, which terms and conditions are set forth substantially in preliminary form in the Memorandum of Agenda Item 5C for the August 29, 1995 Port Commission meeting.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 29, 1995.

Secretary



ED BY
NCISCO PORT COMMISSION

CHIEF HARBOR ENGINEER

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

THE PREMISES
EXHIBIT A

PLANNING DEPARTMENT

City and County of San Francisco 1660 Mission Street San Francisco, CA 94103-2414

(415) 558-6378 PLANNING COMMISSION FAX: 558-6409 ADMINISTRATION FAX: 558-6426 CURRENT PLANNING/ZONING FAX: 558-6409 LONG RANGE PLANNING FAX: 558-6426

NEGATIVE DECLARATION

Publication of Preliminary Negative Declaration: December 21, 1995

Lead Agency: Planning Department City and County of San Francisco,
1660 Mission Street, 5th Floor, San Francisco, CA 94103-2414

Agency Contact Person: Sharon A. Rogers Telephone: (415)558-6382

Project Title: 95.546E - Pier 38 Maritime Recreation Center

Project Contact Person: Joe R. Wyman, AICP - Port Planner Telephone:(415) 274-0352

Project Sponsor: Kenneth A. Hagan, Partner Pinnacle Properties

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Project Address: Port property at Pier 38 - off of The Embarcadero between Townsend and Brannan Streets

Assessor's Block(s) and Lot(s): Block 9900 - Piers do not have lot numbers

City and County: San Francisco

Project Summary: The applicant would lease from the Port of San Francisco approximately 140,000 square feet at Pier 38 to develop a maritime recreation facility. The Pier's bulkhead building, shed, and the apron surrounding it, would be designed and rehabilitated to offer: drystack motorboat storage and launching; fueling services to customers; transient berthing; new and used motorized craft sales; motor boat rental; maritime chandlery; food and beverage sales; customer parking; and public access. Installation and provision of these services would be in three phases over an estimated three years.

Building Permit Application Number, if Applicable: Port issues their own permits.

THIS PROJECT COULD NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. This finding is based upon the criteria of the Guidelines of the State Secretary for Resources, Sections 15064 (Determining Significant Effect), 15065 (Mandatory Findings of Significance) and 15070 (Decision to Prepare a Negative Declaration), and the following reasons as documented in the Initial Evaluation (Initial Study) for the project, which is attached. - OVER -

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Mitigation measures, if any, included in this project to avoid potentially significant effects: -NONE-

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FINAL NEGATIVE DECLARATION issued on: February 2, 1996 (as amended)

In the independent judgement of the Department of City Planning, there is no substantial evidence that the project could have a significant effect on the environment.

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cc: Robert Passmore
Monica Jacobs (1st page only)
Project Sponsor
Port of San Francisco:
Neil Sekhri Diane Artz
Joe Wyman
Port Fire Marshall, Ken Cereghino
Master Decision File
Bulletin Board

Barbara W. Sahm

Barbara W. Sahm
Environmental Review Officer

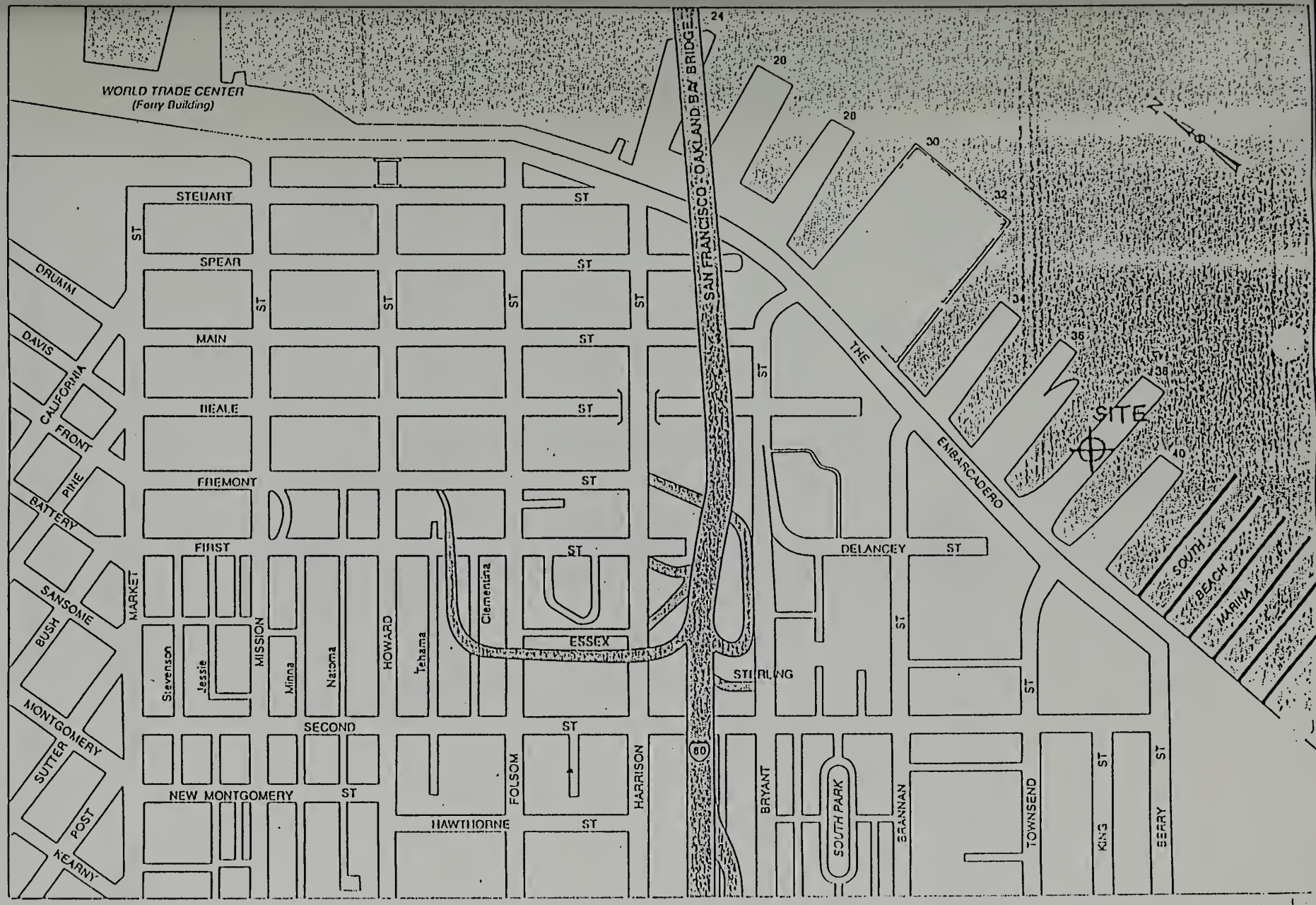
PROJECT DESCRIPTION: The Applicant would lease from the Port of San Francisco approximately 140,000 square feet at Pier 38 to develop a maritime recreation facility. The Pier's bulkhead building, shed, and apron surrounding it, would be designed and rehabilitated to offer: drystack motorboat storage and launching; fueling services to customers; transient berthing; sales of new and used motorized craft; motor boat rental; maritime chandlery; food and beverage service; customer parking; and public access. Installation and provision of these services would be in three phases. Figure 1, on the following page, shows the project location and Figure 2, following that, shows the approximate location of all facilities at full buildout.

The storage and rental operation would have accessory to it a number of maritime support services for which the Project Sponsor is proposing extensive interior remodelling of the Bulkhead building. Phase I of the project would include: boat storage at grade in an area of approximately 24,000 square feet; a maritime chandlery not to exceed 2,500 square feet to provide maritime related items; food and beverage services that could occupy up to 5000 square feet in the bulkhead building; boat sales of motorized craft which could occupy up to 7500 square feet; customer valet parking for 100 cars that would occupy an area of approximately 24,000 square feet ; and the first stage of the public access requirement which would be on the south side of the Pier and connecting with the new public access created at the rear of the Pier 40 Roastery Cafe on The Embarcadero. In addition, there would be the initial repair of the apron and construction of one of the floating docks. The apron requires new fendering and planking or paving as well as possible pile replacement. The improvements have not been designed yet. The floating dock would be approximately 200 feet long and 8 1/2 feet wide and include a handicapped accessible ramp from the pier to the dock.

The drystack boat storage would be the only facility of its kind in San Francisco. At full buildout there would be provision for approximately 300 motorized boats (no sailing craft would be accepted) . This storage system would occupy 24,000 square feet of the Pier at grade on the north side of the shed. Boats would eventually be stacked two to three high, depending on the size of the boat. Please see Figure 2 which shows general examples of the type of system that is proposed. At full buildout, the boats that would be accepted for storage would be motorized craft up to 36 feet in length. Initially, only smaller craft would be accepted. The first phase would not include the rack system; boats would be stored at ground level until the demand exceeded the available ground level space.

The boats would be removed from their storage space and lowered into the Bay by a "negative launch forklift", a dock hoist boat launch system, or an overhead monorail crane. The project sponsor states that the boats would be kept in a "ready to go" condition and could be safety checked, test started, and launched within thirty minutes. /1/ There would be a maximum of six service bays in proximity to the launching area where the boats would be made "water ready", or prepared for storage. Boat owners would not be permitted to work on their own boats. Trained water craft engine mechanics would be on duty whenever the facility was open. Specific disposal facilities for any hazardous wastes (such as oil or anti-fouling agent) would be provided.

Motor driven vessels must be stored with a full fuel tank to lessen the combustion danger. There are two issues related to this: the necessity for proper venting of the boat storage racks, and the necessity to have an on-site marine fuel tank which would require proper ventilation and an approved containment area/2/ . Both sides of the shed have roll up doors for ventilation and there are some windows. A fuel tank would be located on the site in proximity to an existing concrete wall that is



Korve Engineering

Figure 1.
PROJECT LOCATION

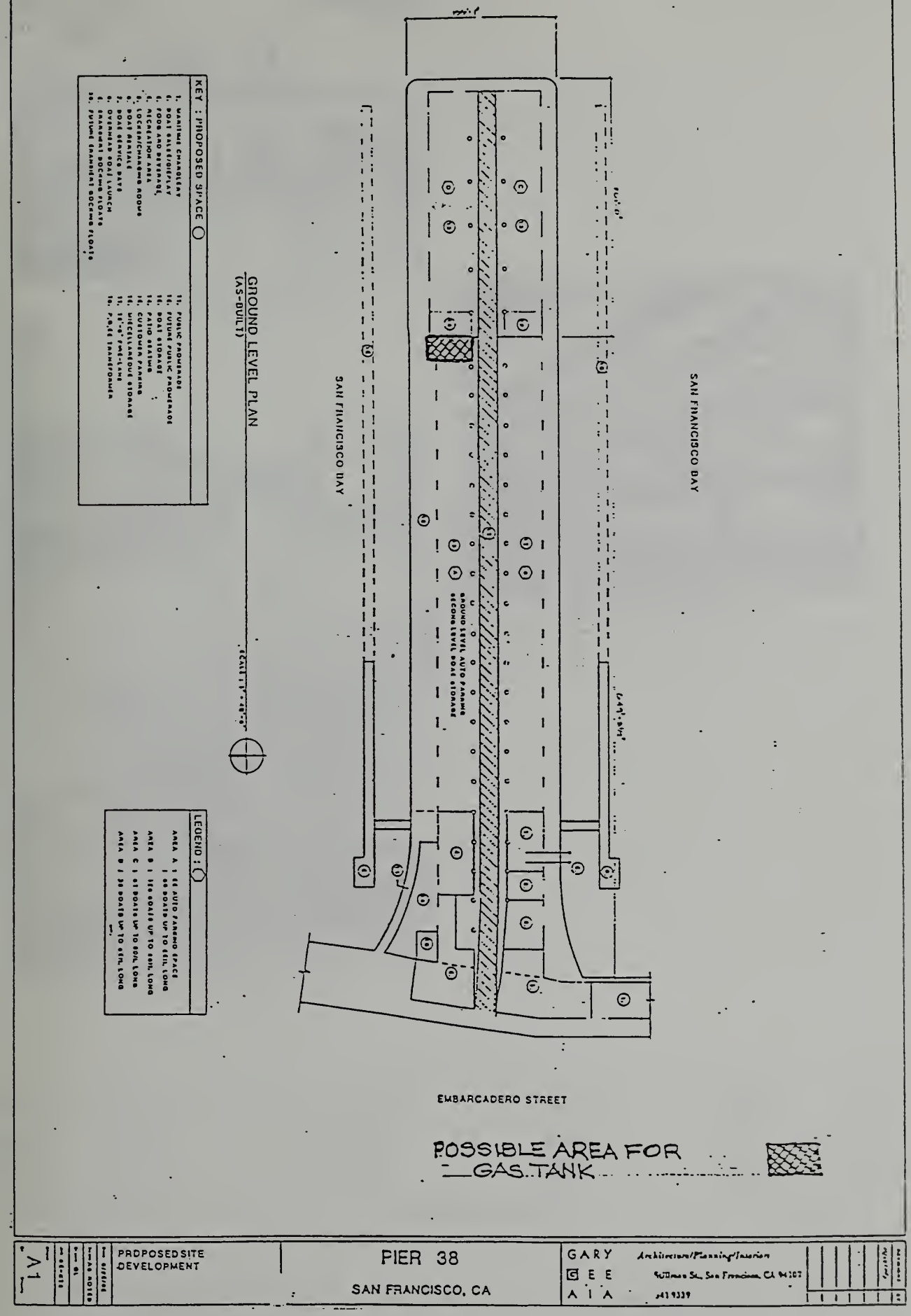
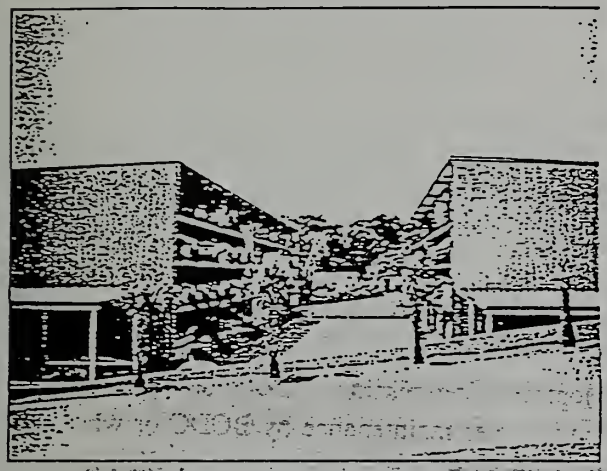


FIGURE 2: Pier 38 Proposed Facilities

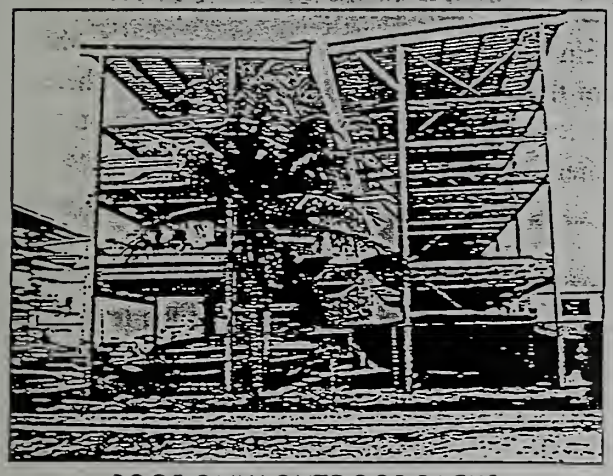
Source: Gary Gee Architects

2-HIGH PORTABLE YARD RACKS

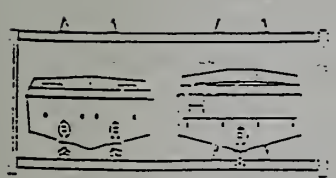


3-SIDED SINGLE SLOPE

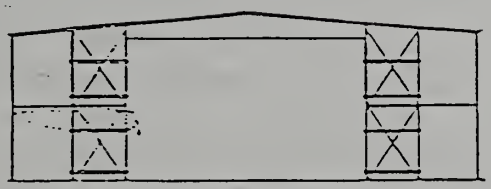
RACKS INSIDE DRYSTACKER



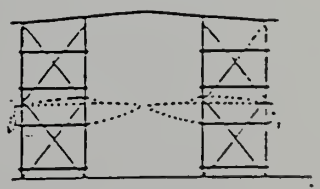
ROOF ONLY OUTDOOR RACKS



PORTABLE RACK



CONVENTIONAL



GABLED

FIGURE 2: Examples of the Type of Storage System Source: Pacific Recreation Advertising

located 650 feet from the western/Embarcadero end of the Pier shed. There would be a tank containment structure as required by the Port Fire Marshal. A fuel tank that would hold approximately 4000 gallons of fuel is being considered by the Project Applicant. The type of tank proposed is a lightweight, steel, double wall, above-ground storage tank. The safety features include a two hour fire-rating and the type of construction that offers ballistic and impact protection. Both tanks (ie the inner and outer) are fully emergency vented. Between the two walls of the tank there is a lightweight insulation which allows migration of any liquid to the monitoring tube so that any leaks would be detected early and easily./3/ The dispensing mechanism would be an ordinary portable gas pump. The tank would be serviced by a fuel truck that would have access to the location of the tank within the shed. This would not be a public fuel dispensing site; it would be utilized only for the on-site stored boats, which includes the rentals.

Due to the weight and containment requirements of the proposed tank, and the truck that would bring in the fuel on a regular basis, the exact location for the fuel tank within the shed cannot be finalized until the structural condition of the piles that support the Pier has been analyzed, and the pounds per square foot (psf) rating determined for the Pier. A possible location is indicated on Figure 2.

There is some indication that a number of piles may have failed over time and would need replacement. /4/ At this time, the Port Engineering staff has not completed the structural analysis. It must be determined by the Bay Conservation and Development Commission (BCDC) staff whether the number of piles that require replacement would be defined as pier maintenance by BCDC or whether the number of replacement piles is such that the activity would be defined as "new Bay fill". /5/ This interpretation by BCDC would make the proposal considerably less viable to the project sponsor due to the reduction of useable pier area for commercial recreation purposes, as well as the high cost of replacement of piles. It is known that all of the fendering piles must be replaced (these are the piles that are on the water side of the apron). If BCDC finds that the work to be done on the pier is simply routine repairs, then the uses on the repaired pier would not be required to meet the Commission's policies on filling the Bay.

A preliminary inspection revealed that there is deterioration of the concrete piles, particularly within the tidal zone, which is an average of six feet from level the of mean low low water to the level of the mean high high water. An inspection that followed the Loma Prieta Earthquake found no apparent damage that required emergency repairs. When originally built, the range of psf tolerance was most likely in the 250 to 500 psf based on the known psf tolerance of other piers constructed around the same time using the same methods.

This Pier is not within the breakwater area that begins approximately 300 feet to the south, at the edge of Pier 40. This breakwater protects the South Beach Sailing Marina which has the capacity for 700 boats (and is full). To address concerns of the Rincon Point-South Beach Citizen's Advisory Committee (CAC) /6/, the project sponsor is proposing to initially have most launching from Pier 38 into the harbor mouth on the north side of the Pier. This harbor mouth is much less obstructed (and somewhat less protected) than it is on the south side adjacent to Pier 40. The project applicant has agreed to do this in response to CAC's concerns about the potentially congested level of boat traffic and perceived increase in the conditions for accidents and collisions to occur. This area traditionally has not had the small motor boats (which could include the high powered racing vessels), which had the highest accident rate of all boats in California in 1994. /7/

The second phase would include completing the concrete boat docks projected to be eight and one half feet wide and the approximate length of the Pier, 900 feet; these would be supported by concrete piles and located on both sides of the Pier to serve transient berthing as well as the boat rentals operation. Port regulations would allow transient boats "live aboard" privileges for 72 hours. A bilge pump out would be constructed on the each of the docks.

The design is not finalized at this time, but it is anticipated that it would be necessary to drive one pile per 40 feet to anchor the transient docks. Initially there would be docks of approximately 200 feet long to be used primarily for boat rentals. In Phase I the dock on the north side of the Pier would be constructed. Each small dock represents 3400 square feet of bay fill; buildout of the full length of both docks (expected to occur in Phase III) could be up to 20,000 square feet of fill. This would be considered floating bay fill by the Bay Conservation and Development Commission. The docks would be in compliance with all American Disability Act (ADA) requirements.

According to the Port's Fire Marshall, beginning with the first phase of the project, the interior of the shed would be sprinklered and equipment would be available on-site at all times to fight fuel combustion fires. Proper ventilation of the interior and measures such as carbon monoxide sensors in the area where vehicles are parked may also be required. /8/ The perimeter area would be required by the Port of San Francisco for fire and maintenance access and by the Bay Conservation and Development Commission (BCDC) for public access. The apron improvements, which would involve replacement of an unknown number of piles, are projected for the third phase. The apron of the Pier has defunct railroad tracks embedded in it, and both sides of the Pier's apron are paved but in an advanced state of deterioration. There are irregularly spaced tie-up cleats for vessels. It may be necessary to entirely replace the apron and fendering system. These improvements would be the responsibility of the Project sponsor.

The Project's proposed maritime facilities would be accessed from The Embarcadero roadway into the bulkhead building and pier area. It would be only right turn in /right turn out. An 18 foot wide corridor would be retained running east/west through the center of the shed with a "T" at the end of the Pier (waterside) for truck turnaround. The interior of the shed and blacktop surface on the Pier would also be improved.

The varied uses that would be included a part of the proposed project have different building code occupancy classifications and thus the level and type of construction between uses will vary according to the occupancy classification/fire rating of adjacent uses. Occupancy classifications for the interior uses proposed for the Pier would be determined by Port Building Officials. /9/ For example, as described above, the Project Sponsor is proposing to install an above ground gasoline storage tank and a fuel dispensing pump. The design would also be required to include a plan for proper emergency exiting using the rollup doors. The protective measures that must be taken for such an installation (including the types of separating walls for different uses) would be determined by the Fire and Building officials for the Port based on the City's Fire and Building Codes.

The boating season on the Bay is April to October, and the busiest time would be on weekends and holidays. In general, the hours of operation during the season would be 6AM to 11PM. There would be varying numbers of staff on duty during regular business hours, with a security guard on duty at all other times. During the peak boating season the project sponsor expects to have a total of 40 to 50

employees per day over several shifts. The Project Applicant would like to provide 100 parking spaces within the Pier shed for customers and employees. The BCDC staff and Commission would make the determination, based on criteria derived from the Bay Plan and interpretations that have been made over time, whether that would be allowed.

According to information from the Tenant and Maritime Services Division of the Port, acceptable uses on this Pier are as follows: /10/

1. Dry boat storage and launching.
2. Boat rental
3. Transient berthing - 72 hour limit
4. New and used boat sales with a showroom (not to exceed 7,500 square feet).
5. Maritime chandlery (not to exceed 2,500 square feet).
6. Food and beverage sales (not to exceed 5,000 square feet).
7. Office and Administrative
8. Customer parking (100 spaces; no cost; no "Public Parking")
9. Public Access

Prohibited Uses are as follows:

1. Excursions/Boat Tours/Charter Operations
2. Water Taxis
3. Non-maritime recreational uses (spas, arcades, etc.)
4. Exercise facilities; Health Club.
5. Public parking
6. R.V. Storage

There is no precisely similar ongoing maritime recreation/boat storage operation in San Francisco from which attendance and parking demands could be accurately forecast. The project sponsor has indicated that they anticipate, on weekends and holidays during their busiest season, that 15% of the boats stored would be out at any one time. This estimate is based on usage at similar facilities in other parts of the Bay and country. Industry wide rates show this to be a maximum daily average during daylight hours in the boating season.

SETTING: The site, Pier 38, is located south of the Bay Bridge and slightly north of the intersection of Townsend and The Embarcadero. At this location on the waterfront, The Embarcadero roadway with a right-of-way of approximately 200-300 feet separates Piers 24 through 40 from the new South Beach high density residential and commercial neighborhood.

The proposal would be contained within the Bulkhead building and the shed of Pier 38 , with the floating docks located in the Bay waters alongside. BCDC-required public access would be provided in phases as the Applicant built out the proposal and restored the apron around the Pier. The Project Sponsor and BCDC would work out an agreement for construction and completion of those improvements prior to the granting of a BCDC Permit.

The shed for Pier 38 was built in 1909 with a Pier extension occurring in 1931; the Bulkhead building was constructed in 1934. It was previously used for cargo handling and some passenger (freighter)

activities and maritime-related services and offices. The Pier is 910' feet long and 155' wide. The Pier shed was constructed by the State of California ; the Bulkhead building was designed by State Architect H.B. Fisher in the Mediterranean architectural style. The Pier shed and Bulkhead are steel and reinforced concrete with 52 steel rollup doors on both sides of the shed. It functioned as a warehouse and shipping point for the intercoastal trade and was an early home (1930's) for the Dollar Steamship Line and the McCormick Steamship Company. The Foundation for San Francisco's Architectural Heritage, regards the bulkhead building and the pier as structures of major importance and they are eligible for the National Register of Historic Places./11/

The 1979 Department of City Planning Architectural Survey rated the bulkhead building 2, with 5 being the highest rating. The Bulkhead Building and Pier Shed are also included in the Draft Waterfront Land Use Plan survey as an historic architectural resource.

The organization Clean Bay and its two boats dock on the south side of the Pier and use some storage space inside the Pier. The organization is an oil/emergency cleanup firm. They would be relocated to some other Port property if this proposal goes ahead. At this time, the new location is not known.

According to Port Engineers, /12/ there are existing water pipes on the north side of Pier and an electrical transformer in place. Gravity sewers connect to the City's system. The utilities would be able to handle the anticipated additional load resulting from the proposal.

South from the Bay Bridge, and to the north of the proposal located on Pier 38 there are five piers: Pier 26(3.6 acres/157,338 square feet) has small amounts of storage, office, and maritime related operations; Pier 28 (2.4 acres/105,000 square feet), has miscellaneous office, storage, and fishing industry uses; Pier 30/32 (13.2 acres/573,564 square feet) is currently used for construction staging and temporary berthing for ships; Pier 34 (2.2 acres/95,000 square feet), is vacant and condemned; and Pier 36 (2.2 acres, 95,025 square feet) is partially used by Delancey Street for warehousing and temporary staging of their other off-site activities.

To the west of the site is the Rincon Point-South Beach Redevelopment Area. While there is still warehousing in the neighborhood, many of the sites have been redeveloped with residential uses, both market rate and low/moderate income. For example, across The Embarcadero are Bayside Village with 868 housing units; the Delancey Street mixed use project with 177 housing units with commercial space including a restaurant at the street level; and Steamboat Point, a project with 108 units, parking spaces and retail uses. The residential population within a two block radius of the proposed site is estimated to be 5000 persons.

To the south, on the waterside of the Embarcadero are Pier 40 with marine support facilities, and the South Beach Marina for recreational craft; there are more than 700 berths, harbormaster's support buildings,and a small boat club. Four piers were removed when the marina was constructed. The first phase of a six plus acre public park was recently dedicated across from the Marina.

ZONING: The project site is located in an underlying M-2 (Heavy Industrial) zoning district with a 40X height limit; this zoning includes all of the Piers from 30/32 south to Hunters Point. This zoning is one of two types in the City that allows industrial development. M-2 is the least restricted as to use;

all M-2 designated areas are located on the eastern edge of the City and are separated from residential and commercial areas.

APPROVAL PROCESS AND PERMITS REQUIRED ON PORT LAND: This proposal does not require any special approvals from the Planning Department of the City and County of San Francisco unless the amount of parking allowed is in excess of 150% of accessory parking which would require conditional use approval from the City Planning Commission. Informal Landmarks Preservation Advisory Board Review for exterior treatment would be advisable because of potential National Register status. The project also requires occupancy classification determinations, building permits and fire permits from the Port of San Francisco; a liquor license from the State of California Board of Equalization if it is intended to serve liquor; and approval of the lease by the Port Commission and the Board of Supervisors due to the proposed 20 year lease period. Provisions of Proposition H, which prohibits approval of non-maritime uses (unless accessory to maritime uses as the restaurant would be) until the Waterfront Plan is in place would not prohibit this proposal. /13/

All projects on lands under the jurisdiction of the Port require a complex approval process often involving special permits from local, state and federal agencies if tidelands and/or waters of the Bay are involved. The following discussion refers to the review and/or approvals for this specific proposal. According to the criteria of CEQA guidelines, Section 15073(b) and (c): where one or more state agencies will be a Responsible Agency or a Trustee Agency or will exercise jurisdiction by law over natural resources affected by the project, the Lead Agency shall send copies of the Negative Declaration to the State Clearinghouse for distribution to the state agencies. While the appeal period remains 20 days, Clearinghouse review establishes a thirty day period for submitting comments to the lead agency.

Following incorporation of comments and finalization of the negative declaration, these procedures would be set in motion: the lease negotiations between the Project Sponsor and the Port Commission could proceed; the site is within the 100 foot shoreline band of BCDC's jurisdiction and requires design review, engineering criteria review, Commission action, determination of the public access requirement and the issuance of a permit. It is anticipated that the amount of pile supported and floating fill necessary to carry out the project would exceed the 2500 square foot Administrative Permit limit and require a major permit from the BCDC. An Army Corp of Engineers permit would be required for the pile driving and activity in the water. Design and construction approval for the floating dock and the boat storage system would be necessary from the Department of Boating and Waterways, State of California. When the above agency actions are completed, all of the construction permits would be issued by the building officials of the Port of San Francisco.

LAND USES, PLANS, AND POLICIES: In the Master Plan of the City and County of San Francisco, the site is within the Northeastern Waterfront Planning Area. It is located at the southern end of that planning area, in the North China Basin Subarea. This was once a vital area of San Francisco with thriving maritime and maritime- related activities that contributed to the City's economic well-being. However, since World War II, industrial and maritime activity in the area has steadily declined. Changes in the transportation technology related to the movement of goods by water contributed to the decline of the waterfront. Containerization of cargo has resulted in dramatic shifts in maritime handling and transportation patterns. Emphasis has shifted from the traditional break-bulk method of cargo handling, for which the Port's finger piers were designed, to the need for

large modern facilities requiring considerable backland support areas and direct rail access for double stacked containers. San Francisco's Port does not have these facilities.

Today, portions of the Northeastern waterfront continue to be used for minor amounts of break-bulk cargo handling, ship repair and related activities. However, some of the piers are vacant and dilapidated, and some of the land is under-utilized. . .

In the Draft Waterfront Land Use Plan, which is currently undergoing environmental review prior to final consideration by the Port Commission, the area where Pier 38 is located is identified as the South Beach/Mission Bay Subarea. The possible long term land uses proposed for this Pier include: recreational boating and water use; ferry and excursion boat berthing; maritime office; public access: and artists and designers studios.

The BCDC Special Area Plan identifies permitted uses on new or replacement fill on this Pier as: commercial recreation; public recreation/open space/public access subject to these policies; Bay oriented commercial recreation on replacement fill should be limited in scale and there should be no hotel/boatel use. /14/

TRANSPORTATION: The discussion that follows will describe the existing transportation setting and conditions in the vicinity since there have been major changes within the last two years. The South Embarcadero Roadway renovation is completed on The Embarcadero from Steuart and Folsom Streets to Third and King Streets. Trees are planted; installation of the overhead power source for light rail is complete; all traffic signals are activated; lighting construction of the "art ribbon" project on the promenade and installation of the bronze sidewalk plaques and vertical pylons which are part of the historic interpretive signage project is finished. Light rail service on this route has not yet begun.

There is an extensive transportation network of highways and major arterials that serve the southern Embarcadero, in general, and the site in particular. Three freeways provide regional access to the project site: US 101 serves the area south of San Francisco which includes the south bay, and the north, via the Golden Gate Bridge; Interstate 80 from the East Bay and Central Valley, and Interstate 280 serves the area southwest of San Francisco from the Peninsula. Access to the Bay Bridge is via The Embarcadero and Harrison Street, three long blocks to the north and at Sterling Street just above Second and Bryant. The closest surface streets are described below. The traffic on The Embarcadero on weekends at these intersections is free flowing (Level of Service A) /15/:

The Embarcadero is the major thoroughfare running north/south along the waterfront from Berry Street in the south, to Fisherman's Wharf in the north. With completion of the South Embarcadero Project there are two through lanes in each direction with turn pockets provided at key intersections. South of Folsom Street, the northbound and southbound roadways are separated by a median accommodating Muni Metro light rail tracks. On-street parking is permitted on The Embarcadero south of Harrison Street.

Brannan Street runs east/west with two travel lanes in each direction. It intersects The Embarcadero north of the project site. There is a traffic signal with a left turn pocket and arrow. Parking is permitted on both sides of the street. /16/

Townsend Street runs east/west with two travel lanes in each direction. It intersects The Embarcadero just south of the project site. There is a traffic signal with a left turn pocket and arrow. Parking is permitted on both sides of the street.

Transit service is provided by MUNI. There are three MUNI lines operating on individualized schedules in the vicinity of the project: Bus line #32 and express routes 80X and 82X. The express lines operate between the Caltrain Depot at Fourth and Townsend Street and downtown San Francisco exclusively during the weekday commute peak hours. The #32 line provides service from the Hyde Street Park in Fisherman's Wharf to the Caltrain Depot. The #32 travels on The Embarcadero, and, during the weekend, operates on 20 minute headways between 6:35 AM and 6:15 PM. The foot of Market Street, and the BART station, are six blocks northwest of the site. The Ferry Building with its terminals for ferry boats is also six blocks north on the soon-to-be completed Embarcadero Promenade.

In addition, the Muni Metro Turnback (MMT) Project is also under construction on The Embarcadero between Howard and Folsom Street. This project is scheduled to be finished in July, 1996. Completion of this construction will allow the extension of Muni Metro onto the Embarcadero south of Folsom Street to be put into operation. There would then be a transfer point for the F-Line from the northern waterfront to the Muni Metro Extension (MMX) going south.

ENVIRONMENTAL IMPACTS: The drystack storage and associated uses proposed for Pier 38 are similar to installations at other places around the Bay, particularly in the Delta or wherever smaller motorized craft are common. The usage of smaller motorized craft on the Bay around San Francisco has been limited. There is no other drystack storage facility in San Francisco. The part of the waterfront where this proposal would be located has only experienced redevelopment within the last 10 years. Many of the high density residential developments are quite new to the area. This proposal and the activity associated with it, except for the dry storage stacking of motorized vessels in the shed, would be similar to the sailing and boating activities around the adjacent Pier 40 and the South Beach Harbor Marina. The existing sailing and boating uses and activities have been compatible with the high density mixed commercial and residential uses across The Embarcadero. Given the similarity of the activities that would occur on this site compared to other activities in the vicinity, this proposal would not create unexpected or disturbing land use impacts.

Views from the residences and the Delancey Street residential and commercial buildings located across the street are unobstructed over Pier 30-32 to the Bay (even with the addition of the palm trees to the center of the new roadway) . At present the view of the Pier 38 Bulkhead building and Pier 40 shed are a low profile part of the land and bayscape. There would be no new structures. There would be a minimal increase in foot traffic on The Embarcadero from this project. The present sparsely populated character of the sidewalks, street and Piers would not be expected to change noticeably.

With the exception of the areas designated for boat storage and parking, the size of the other proposed uses for the bulkhead building and the pier shed are small and not expected to attract large numbers of visitors or patrons at a high level of intensity or frequency. As stated above, experience with drystack boat storage in other locations shows that approximately 15% of the total number of stored boats are active at any one time during the boating season. The maximum number of boats the project sponsor

is planning for is 300 by the end of the third phase. This would yield an average of 45 boats out at one time.

The project sponsor intends to have 100 on-site valet parking spaces (if permitted by BCDC). The parking is expected to accommodate both the automobiles and the trailers on which the boats are hauled, as well as the patrons of the other accessory uses. Section 204.5 of the City Planning Code would require conditional use approval should the number of spaces on site exceed 150% of the accessory parking. The parking would not be for general public use. There is other parking in the vicinity, as discussed below, which, while it could not serve the automobile/trailer combinations, would be a resource for the boat users. Automobile ingress and egress to Pier 38 and its facilities can only be right-turn in, right-turn out from The Embarcadero due to the raised right-of-way for the light rail that divides the north/south lanes of travel.

For purposes of calculating the parking requirement the Planning Department of the City and County of San Francisco defines the uses that would occur on the site, and the required parking as follows: Because the combined square footage of all uses exceeds individual use thresholds, the standard requirement with no exemptions would be applied to each use for purposes of calculating what the required parking would be.

Business office requires one space per 500 square feet. Estimated square footage of office space in this project: 1500 square feet. 3 parking spaces required.

Chandlery/retail requires one space per 500 square feet of occupied area. Estimated retail is 2500 square feet. 5 parking spaces required.

Boat Sales/bulky retail requires one space per 1000 square feet. Estimated bulky retail is 7500 square feet. 7.5 parking spaces required.

Restaurant requires one space per 200 square feet. Estimated restaurant size is 5000 square feet. 25 parking spaces required.

Boat storage/warehouse space requires one space per 2000 square feet. Phase I would be 24,000 square feet. 12 parking spaces would be required.

Based on the City Planning Code, the number of required parking spaces for the proposed project would be 53. Fuel, merchandise and/or freight and boat loading and unloading, and service deliveries, would take place on the Pier. The code would require two off-street freight loading spaces which would be provided on the Pier.

There are 5 off-street parking facilities with 1280 parking spaces within a two block radius of the project area. The off-street facilities generally serve downtown employees during weekdays. These facilities are otherwise vacant, and thus presumed available on weekends. The restaurant use could operate during the week though it is not anticipated that the peak hours of use would coincide with the daytime parking users thus there would be lots of space available. For example, on Pier 30/32, the Park Express operator has 200 striped spaces and the potential for 400 more. /17/ The project would provide required parking on-site, with additional spaces up to a total of 100, if allowed by BCDC and

the City Planning Commission through the conditional use process. It is intended to provide all project required parking on site. Existing parking in the vicinity and proposed on-site parking appears adequate to handle new demand from this project.

The daily person trips generated by the project based on the types of uses /18/ are projected to be as shown below:

Square Feet	Use	Total Person Trips Daily
2500	Retail	375 trips/day
7500	Sales/Showroom	229
5000	Restaurant	3000
24,000	Manufacturing	190

TOTAL Daily Number of Person Trip Ends: 3793

All of the proposed uses are recreational and would operate primarily on weekends with the exception of the restaurant. Weekday trips would be expected to be negligible during peak traffic hours. It is conservatively estimated that all trips would be by automobile with an auto occupancy of 2.5 persons per vehicle. /19/ This would represent an approximate total of 1517 vehicle trips per day.

Information from a larger project proposed for the nearby Pier 30/32 provides a basis for analyzing the potential traffic impacts of the Pier 38 project. A transportation study was prepared for and accepted by this Office on that project. The Pier 32 Outdoor Market Transportation Study assumed an average daily attendance of 8,250 patrons in its analysis who were projected to travel to Pier 30/32 by automobile. In this conservative analysis, there was no adjustment for other modes of travel. Using this "worst case" scenario, there would have been 3,300 vehicle trips per weekend day. Of the nine intersections analyzed (which included the Brannan/Embarcadero intersection north of the Townsend/Embarcadero intersection), none would have approached level of service D. Existing levels of service were A, and existing plus project levels of service were projected to go to B in four of those studied with the rest remaining at level of service A. The only exception was Bryant/Main Street (the only all way stop),from level of service B to level of service C.

The Pier 38 proposal is located two blocks further south on The Embarcadero from the Pier 30/32 Market (which is no longer operating). Pier 38 would, at maximum buildout, conservatively generate approximately 1517 automobile trip ends per day(about half of what was projected for the Pier 30/32 project). The addition of project traffic to existing conditions would not create any significant traffic impacts. Therefore, no improvement measures are required.

The noise environment of the site, like that of greater downtown San Francisco in general, is dominated by vehicular traffic noise. The nearest residences, at Townsend Street and The Embarcadero, are about 350 feet southwest of the site. An approximate doubling of traffic volumes in the area would be necessary to produce an increase in ambient noise levels noticeable to most people. While the project would not approach causing a doubling in traffic volumes, added to the existing

traffic noise would be the noise of the motorboats leaving from Pier 38. This additional noise would not occur as a steady or consistent addition to the background noise level but would be intermittent and of short duration. The boats would be starting from approximately 15 feet below the street level and thus about 365 feet from the nearest sensitive receptors.

The average cumulative noise level along The Embarcadero was measured for the Mid-Embarcadero Terminal Separator environmental review/20/ from Brannan Street to Broadway. While the individual source noise readings are not directly comparable to these average cumulative figures (Ldn) for sensitive receptors, it gives some indication of the level of the existing ambient noise in the selected recreational, office and residential complexes along The Embarcadero:

Location	Average Ldn (dBA)	
Pier 7 (recreational use)	69	(peak hour measurement)
Ferry Building (office use)	75	
Portside Apartments	75	
Bayside Village (Bryant St)	75	
Bayside Village (Brannan St)	72	

In a noise study completed for the Pier 39 Seaplane project /21/, four episodes of noise were measured from the end of Pier 39 facing east toward the Bay:

Source	dBA
speedboats	58 60 73 76
tour/ferry boats	62 70 77 78
sea lion barks	up to 77

(this measurement taken overlooking sea lion docks)

According to the U.S. Department of Housing and Urban Development noise guidebook /22/ the effective distance related to the average daily volume of a noise source is one of the principal one of the determinants of whether the source is an unacceptable noise generator, or whether the environment is acceptable for sensitive receptors. /23/ The Guidebook does not contain information specific to motorboats, but focusses on automobile, truck, and train noise. According to Workchart 2 in the Guidebook, 100 heavy truck trips per day (travelling at 55mph) at a distance of 200 feet falls within the "acceptable" noise range for residences. Clearly, speedboat noise is similar to or less than heavy truck noise, so that the expected 45 boats per day at a distance of 350 feet to the nearest residences would be expected to fall well within the "acceptable" noise range. Therefore no noise impacts from the project are anticipated.

The Bay Area Air Quality Management District (BAAQMD) has established thresholds for projects requiring its review for potential air quality impacts. Based on estimates developed for the transportation discussion about 1500 vehicle trip ends per day could occur. A development generating less than 2,000 vehicle trip ends per day would not have a measurable impact on air quality and therefore does not require an air quality analysis. Thresholds are based on the minimum size projects which the District considers capable of producing air quality problems. Demolition and construction activity in the interior of the bulkhead and pier shed would temporarily raise dust levels in the area, but not to a level that would have significant impacts upon air quality.

The proposed project would increase demand for and use of public services and utilities on the site. There is an existing sewer and waterline under the pier. The improvements would not increase water and energy consumption in excess of amounts expected and previously provided for on this Pier.

The project site is in a Special Geologic Study Area as shown in the Community Safety Element of the San Francisco Master Plan. This map indicates areas in which one or more geologic hazards exist. Depending upon the nature of the hazard, this site has the potential for experiencing land movement, and/or inundation. This area would be subject to both types of hazards: severe ground shaking should there be a major earthquake; and inundation in the case of off-shore deep ocean disturbances. According to the Blume Report, "San Francisco Seismic Safety Investigation" prepared in June of 1974, the potential of damage by inundation would be greatest in the low-lying areas with the greatest danger to moored boats and marinas. The force of such an event would be attenuated by the distance of the structure(s) from the entrance to the Bay. In the analysis contained in the Blume report regarding the potential danger to structures other than buildings, from a major seismic event, it is stated that: "waterfront structures, especially where situated on or alongside made ground, are subject to damage but this is generally not of a catastrophic nature."

In terms of seismic safety, Pier 38 is on concrete piles, or concrete sheathed piles, with a concrete platform. Many, though not all of the Port's piers, as well as those at Fort Mason, are of the same type of construction. In a major earthquake, at any of these facilities, the participants could be at risk. Seismic upgrading of the structure would only be required if there was a substantial amount of construction. By comparison, Pier 45, which is on fill, suffered considerable damage in the Loma Prieta earthquake of 1989. The damage to Pier 45 was so extensive that it was necessary to close it down and move the fish handling operation to other Port locations. However, despite this damage, no lives were threatened and little damage was sustained by the piershed contents. Pier 38, along with Piers 39, 35, and 33, which are all on concrete piles, did not suffer more than cosmetic or minor structural damage from that seismic event. Following a safety inspection, all activities that were permitted on those piers prior to the October 1989 earthquake have been permitted to continue. According to the Port Engineer, following that earthquake, all Port properties were inspected for damage. If damage was sustained, FEMA grants to repair the earthquake damage were sought. Pier 38 did not require FEMA funded work.

An examination of the Pier reveals that all of the fendering of the perimeter and the apron should be replaced; the substructure, as with all of the piers, has sustained some corrosion damage over the years. Again, by comparison, many other Port-owned Piers have piles which have sustained significantly larger percentages of corrosion damage than Pier 38 and are carrying much heavier superimposed live loads than those on Pier 38 /24/. It is important to note that after the waterfront master-plan is completed within the next few years, the Port intends to repair and upgrade their pier facilities./25/

In response to a notification sent out on October 27, 1995, there were several issues raised by concerned parties which have been discussed above. These included: fire safety, ventilation for stored boats, water traffic safety, engine noise, accident rate for small boats; hazardous materials handling. The South Beach Citizens Advisory Committee raised most of these issues while at the same time it has endorsed, with a resolution that may be inspected in the Project File, this proposal.

This is a request for a new type of boat storage facility. The proposal does not require any special authorization by the City Planning Commission. A amendment to an existing BCDC Permit would be required. The conditions of Proposition H are met by this proposal. While local concerns or other planning considerations may be grounds for modification or denial of the proposal, there is no substantial evidence that the project would have a significant effect on the environment.

NOTES:

/1/ Project description submitted to the Planning Department by the Project Sponsor with an application for environmental review dated 10/3/95.

/2/ Pier 38 site visit on December 12, 1995. Discussion with the Port Fire Marshall, Ken Cereghino, regarding the safety issues for this type of facility.

/3/ Information submitted by the applicant from material prepared by the Steel Tank Association describing the proposed Fireguard tank.

/4/ Telephone conversation with Port of San Francisco Engineer Ed Berne, December 5, 1995.

/5/ Communication from the Bay Conservation and Development Commission in response to the preliminary negative declaration, submitted to the Office of Environmental Review January 26, 1996.

/6/ The 22 member Citizen's Advisory Committee for the Rincon Point-South Beach Redevelopment Project is comprised of residents and owners from the area and representatives of community organizations. They met to discuss this project on November 8, 1995 and a resolution supporting the development of the proposed project was passed. It may be inspected in the Project File at the Planning Department, 1660 Mission Street, San Francisco, California.

/7/ The California Boating and Accident Report for 1994 published by the State of California Department of Boating and Waterways found that 45% of all boating accidents involved a collision with another vessel, with small motorized vessels having the largest number of the total of 709 accidents for all of California.

/8/ Telephone discussion with Port Fire Marshall, January 9, 1996 regarding conditions that the Port may attach to the building permit issued by the Port.

/9/ See UBC Code Sections 602 C and the Fire Code, Chapter 32: Sections 32.101 and 32.104.

/10/ Internal memorandum from Diane Artz to the Planning Section of the Port dated July 19, 1995.

/11/ Communication from David Bahlman, Executive Director, dated November 7, 1995. Available in the project file at the Planning Department - 1660 Mission Street., San Francisco, CA.

/12/ Skip Zeller, Mechanical Engineer and Mabal Bhat Electrical Engineer, both contacted by telephone December 7, 1995 regarding the available utilities.

/13/ Opinion given to the Honorable Sue Bierman, Supervisor Board of Supervisors, on June 2, 1994 RE: Applicability of Proposition H to the San Francisco Port Commission. Available in the project file at the Planning Department, 1660 Mission Street, 4th floor.

/14/ Bay Conservation and Development Commission's San Francisco Waterfront Special Area Plan, April 1975 as amended.

/15/ The Pier 32 Outdoor Market Transportation Study, done for the City and County of San Francisco Planing Department by Korve Engineering, July 1994; the study examined eight intersections, including the two included in this document for a much larger project.

/16/ At the time of the Mid-Embarcadero/Terminal Separator Studies this intersection was not yet signalized. No data is available for today's weekday/peak hour levels of service. The EIR/EIS's projection for the 2015 cumulative level of service is C.

/17/ Pier 32 Outdoor Market Transportation Study (Case No.94.262E), prepared for the City and County of San Francisco, Department of City Planning by Korve Engineering, July 12, 1994. This report is available in the file for this case (Case No. 95.546E) at 1660 Mission Street.

/18/ Guidelines for Environmental Review: Transportation Impacts, City and County of San Francisco Planning Department, July 1991.

/19/ This traffic and transportation discussion is largely based on the Pier 32 Outdoor Market Transportation Study done for the City and County of San Francisco Planning Department by Korve Engineering in July 1994.

/20/ Alternatives to Replacement of the Embarcadero Freeway and the Terminal Separator Structure, Draft EIS/EIR prepared for the U.S. Department of Transportation Federal Highway Administration, State of California Department of Transportation, and the City and County of San Francisco Planning Department, published August 25, 1995. See Table 3.5-2 Pre-Earthquake and Existing Ldn Noise Levels, page 180; Tables 4.7-2 Average Peak Hour Leq Traffic Noise Levels (dBA) for Outdoor Areas and 4.7-3 Average Ldn Traffic Noise Levels (dBA), pages 383 and 384.

/21/ Noise Assessment for Seaplane Operations at Pier 39, San Francisco, California, November 29, 1994, prepared by Illingworth & Rodkin, Inc. Acoustical Engineers.

/22/ The Noise Guidebook, prepared as a basic reference document by the Environmental Planning Division, Office of Environment and Energy, U.S. Department of Housing and Urban Development.

/23/ Ibid., pages 66 through 68.

/24/ Memorandum dated September 7, 1993 to Paul Deutsch and Sharon Rogers from Joe Roger, Port Structural Engineer, regarding the structural status of Pier 35.

/25/ Ibid.

ENVIRONMENTAL EVALUATION CHECKLIST
(Initial Study)

File No: 95.546E Title: PIER 38 - MARITIME RECREATION CENTER

Street Address: The Embarcadero at Townsend Assessor's Block/Lot: _____

Initial Study Prepared by: Deborah Rogers

A. COMPATIBILITY WITH EXISTING ZONING AND PLANS	Not Applicable	Discussed
1) Discuss any variances, special authorizations, or changes proposed to the City Planning Code or Zoning Map, if applicable.	___	✓
*2) Discuss any conflicts with any adopted environmental plans and goals of the City or Region, if applicable.	___	✓

B. ENVIRONMENTAL EFFECTS - Could the project:	YES	NO	DISCUSSED
1) Land Use			
*(a) Disrupt or divide the physical arrangement of an established community?	___	✓	___
*(b) Have any substantial impact upon the existing character of the vicinity?	___	✓	✓
2) Visual Quality			
*(a) Have a substantial, demonstrable negative aesthetic effect?	___	✓	___
(b) Substantially degrade or obstruct any scenic view or vista now observed from public areas?	___	✓	✓
(c) Generate obtrusive light or glare substantially impacting other properties?	___	✓	___
3) Population			
*(a) Induce substantial growth or concentration of population?	___	✓	___
*(b) Displace a large number of people (involving either housing or employment)?	___	✓	___
(c) Create a substantial demand for additional housing in San Francisco, or substantially reduce the housing supply?	___	✓	___
4) Transportation/Circulation			
*(a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system?	___	✓	✓
(b) Interfere with existing transportation systems, causing substantial alterations to circulation patterns or major traffic hazards?	___	✓	___

* Derived from State EIR Guidelines, Appendix G, normally significant effect.

	YES	NO	DISCUSSED
(c) Cause a substantial increase in transit demand which cannot be accommodated by existing or proposed transit capacity?	—	✓	✓
(d) Cause a substantial increase in parking demand which cannot be accommodated by existing parking facilities?	—	✓	✓
5) Noise			
*(a) Increase substantially the ambient noise levels for adjoining areas?	—	✓	✓
(b) Violate Title 24 Noise Insulation Standards, if applicable?	—	✓	—
(c) Be substantially impacted by existing noise levels?	—	✓	—
6) Air Quality/Climate			
*(a) Violate any ambient air quality standard or contribute substantially to an existing or projected air quality violation?	—	✓	✓
*(b) Expose sensitive receptors to substantial pollutant concentrations?	—	✓	—
(c) Permeate its vicinity with objectionable odors?	—	✓	—
(d) Alter wind, moisture or temperature (including sun shading effects) so as to substantially affect public areas, or change the climate either in the community or region?	—	✓	—
7) Utilities/Public Services			
*(a) Breach published national, state or local standards relating to solid waste or litter control?	—	✓	—
*(b) Extend a sewer trunk line with capacity to serve new development?	—	✓	—
(c) Substantially increase demand for schools, recreation or other public facilities?	—	✓	—
(d) Require major expansion of power, water, or communications facilities?	—	✓	✓
8) Biology			
*(a) Substantially affect a rare or endangered species of animal or plant or the habitat of the species?	—	✓	—
*(b) Substantially diminish habitat for fish, wildlife or plants, or interfere substantially with the movement of any resident or migratory fish or wildlife species?	—	✓	—
(c) Require removal of substantial numbers of mature, scenic trees?	—	✓	—
9) Geology/Topography			
*(a) Expose people or structures to major geologic hazards (slides, subsidence, erosion and liquefaction).	—	✓	✓
(b) Change substantially the topography or any unique geologic or physical features of the site?	—	✓	—

	YES	NO	DISCUSSED
10) Water			
*(a) Substantially degrade water quality, or contaminate a public water supply?	—	✓	—
*(b) Substantially degrade or deplete ground water resources, or interfere substantially with ground water recharge?	—	✓	—
*(c) Cause substantial flooding, erosion or siltation?	—	✓	—
11) Energy/Natural Resources			
*(a) Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?	—	✓	—
(b) Have a substantial effect on the potential use, extraction, or depletion of a natural resource?	—	✓	—
12) Hazards			
*(a) Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected?	—	✓	✓
*(b) Interfere with emergency response plans or emergency evacuation plans?		✓	✓
(c) Create a potentially substantial fire hazard?	✓	—	✓
13) Cultural			
*(a) Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethnic or social group; or a paleontological site except as a part of a scientific study?	—	✓	—
(b) Conflict with established recreational, educational, religious or scientific uses of the area?	—	✓	—
(c) Conflict with the preservation of buildings subject to the provisions of Article 10 or Article 11 of the City Planning Code?	—	✓	✓

C. OTHER	YES	NO	DISCUSSED
Require approval and/or permits from City Departments other than Department of City Planning or Bureau of Building Inspection, or from Regional, State or Federal Agencies?	✓	—	✓

D. MITIGATION MEASURES	YES	NO	N/A	DISCUSSE
1) Could the project have significant effects if mitigation measures are not included in the project?	—	✓	—	—
2) Are all mitigation measures necessary to eliminate significant effects included in the project?	—	—	✓	—

PETE WILSON
GOVERNOR

State of California

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET
SACRAMENTO 95814

LEE GRISSOM
DIRECTOR

February 2, 1996

SHARON ROGERS
CITY & COUNTY OF SAN FRANCISCO PLANNING DEPT
PIER 38 TOWNSEND ST/EMBARCADEO
SAN FRANCISCO, CA 94107

Subject: PIER 38 MARITIME RECREATION CENTER SCH #: 95123046

Dear SHARON ROGERS:

The State Clearinghouse submitted the above named environmental document to selected state agencies for review. The review period is closed and none of the state agencies have comments. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call at (916) 445-0613 if you have any questions regarding the environmental review process. When contacting the Clearinghouse in this matter, please use the eight-digit State Clearinghouse number so that we may respond promptly.

Sincerely,

Antero A. Rivasplata

ANTERO A. RIVASPLATA
Chief, State Clearinghouse

PORT OF SAN FRANCISCO

MEMORANDUM

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

February 5, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Adoption of Finding of Negative Declaration and Approval of Lease with Bedrock Concrete Inc. for a 5 year lease at SWL 344 on the north side of Amador Street at Wharf 90-92.

DIRECTOR'S RECOMMENDATION: ADOPT FINDING OF NEGATIVE DECLARATION AND APPROVE LEASE WITH BEDROCK CONCRETE, INC.

Background

Bedrock Concrete, Inc. a bona fide minority owned business enterprise approached the Port desiring to lease 30,000 square feet of paved and unpaved yard space at Seawall Lot 344 on the north side of Amador Street at Wharf 90-92 to construct and operate a small concrete batching plant. Staff has negotiated the terms of a proposed lease agreement with Bedrock Concrete, Inc. consistent with Port Commission standards. Port Commission approval is required for a finding of the Negative Declaration previously issued by the City Department of Planning, Office of Environmental Review.

The terms of the proposed lease (Lease No. L-12125) are as follows:

Premises (Section 1.1)

The Premises consist of 30,000 square feet of paved (25,000 square feet) and unpaved (5,000 square feet) open yard space situated on the north side of Amador Street at Wharf 90-92 near the now closed grain elevators.

THIS PRINT COVERS CALENDAR ITEM NO. 5D

Permitted Use (Section 8.1)

Concrete batching plant, sand, rock, gravel and cement storage and cement delivery vehicle storage.

Term (Section 1.2)

The Term is five (5) years. The Port's standard early termination language (Section 4.2) is included.

Base Rent (Section 1.3; 5.2)

The Base Rent is as follows:

First Lease Year	$ 3,015.00	($.10 per sq. ft.)
Second Lease Year	3,768.75	($.125 per sq. ft.)
Remainder of Term	As adjusted annually by the Consumer Price Index (CPI)	

Maintenance Obligations (Section 11.1)

Tenant shall maintain the Premises and all improvements thereon and appurtenances thereto.

Hazardous Materials (Sections 16.2, 16.3, 20.3)

The Port Commission approved alternate hazardous materials language has been incorporated in this lease.

ENVIRONMENTAL CLEARANCES

A Final Negative Declaration for the project was adopted and issued by the Department of City Planning on January 10, 1996. The Final Negative Declaration is attached hereto for review. The final Negative Declaration found that there is no substantial evidence that the project could have a significant effect on the environment. No mitigation measures are required.

Summary

The nature of the proposed use and the terms of the proposed lease are consistent with the Port's policies and will not have a significant effect on the environment.

Prepared by: Frederick D. White, Director, Tenant & Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-19

WHEREAS, Charter Section 3.581 grants to the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, Bedrock Concrete, Inc. a bona fide minority owned business enterprise (MBE) has proposed to develop and operate a concrete batching plant at SWL 344; and

WHEREAS, Staff has negotiated all of the terms and conditions of a proposed lease with Bedrock Concrete, Inc; and

WHEREAS, On December 1, 1995, the Department of City Planning issued for public review and comment a Preliminary Negative Declaration, Case No. 95-319E for the proposed concrete batching plant and on January 10, 1996, the Negative Declaration was finalized;

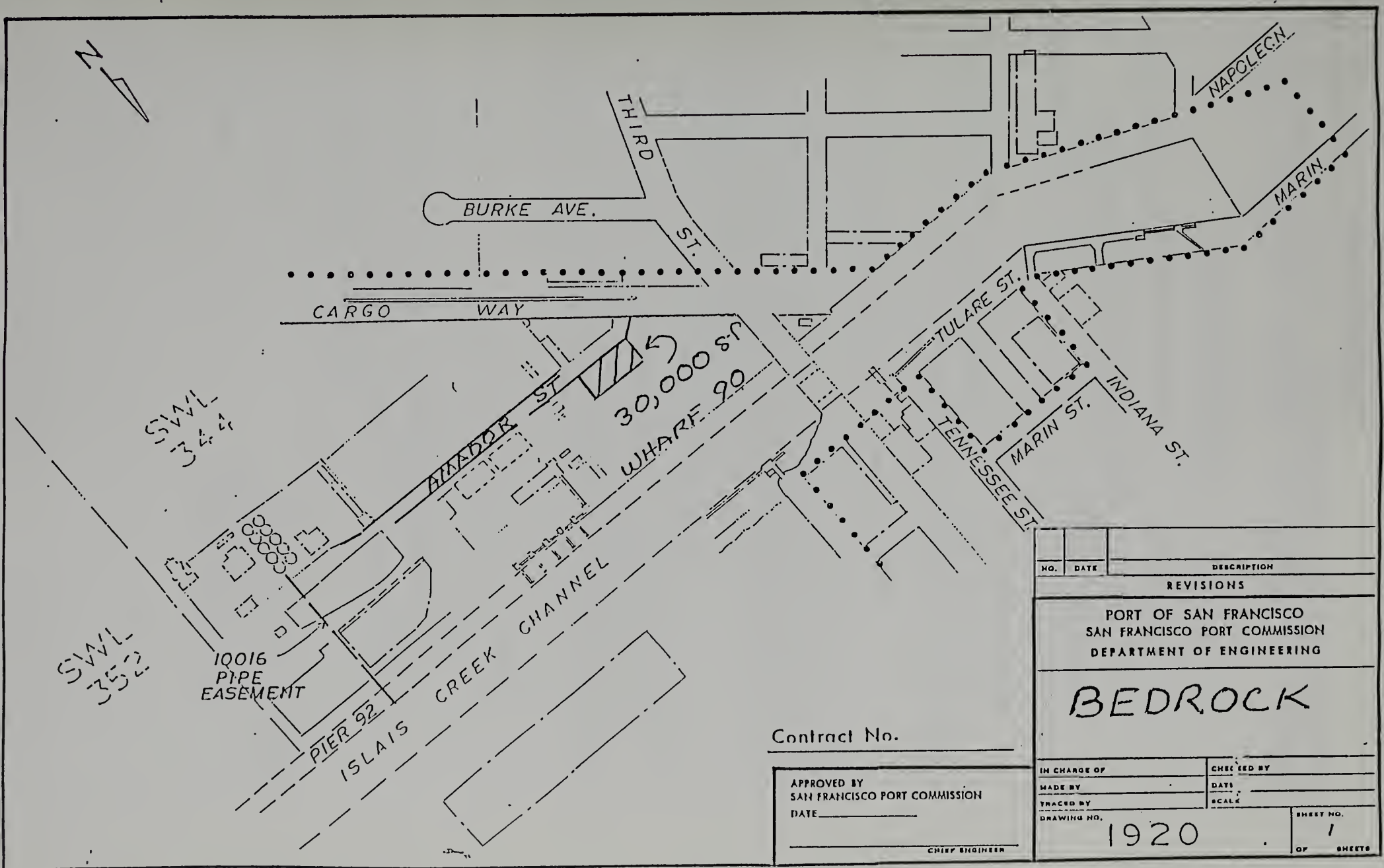
RESOLVED, That this Port Commission has considered and reviewed the Final Negative Declaration and hereby adopts said Final Negative Declaration, and hereby finds and determines that the concrete batching plant described therein will have no significant impact on the environment, and adopts and incorporates herein by reference thereto the findings of the Final Negative Declaration, Case No. 95-319E, issued by the Department of City Planning, a copy of which is on file with the Secretary on the Port Commission, and be it further;

RESOLVED, that the San Francisco Port Commission hereby approves entering into Lease No. L-12125 with Bedrock Concrete, Inc. substantially on the terms and conditions outlined in the Memorandum to the Port Commission for Agenda Item 5D for the Port Commission meeting of February 13, 1996 attached hereto and as more fully contained in Lease.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 13, 1996.

_____
Secretary

G:\wp51\agendas\bedrock.mem\KB\cp\ 2-5-96



Contract No.

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE

CHIEF ENGINEER

NO.	DATE	DESCRIPTION

REVISIONS

PORT OF SAN FRANCISCO
SAN FRANCISCO PORT COMMISSION
DEPARTMENT OF ENGINEERING

BEDROCK

IN CHARGE OF	CHECKED BY
MADE BY	DATE
TRACED BY	SCALE
DRAWING NO. 1920	SHEET NO. 1 OF SHEETS

PLANNING DEPARTMENT

City and County of San Francisco 1660 Mission Street San Francisco, CA 94103-2414

(415) 558-6378 PLANNING COMMISSION FAX: 558-6409 ADMINISTRATION FAX: 558-6426 CURRENT PLANNING/ZONING FAX: 558-6409 LONG RANGE PLANNING FAX: 558-6426

NEGATIVE DECLARATION

Publication of Preliminary Negative Declaration: December 1, 1995

Lead Agency: Planning Department City and County of San Francisco,
1660 Mission Street, 5th Floor, San Francisco, CA 94103-2414

Agency Contact Person: Sharon A. Rogers Telephone: (415)558-6382

Project Title: 95.319E Small Concrete Batch Plant Project Sponsor: Bedrock Concrete Inc.

Project Contact Person: Joe R. Wyman, AICP - Port Planner Telephone:(415) 274-0352

Project Address: Port property at Wharf 90, east of Cargo Way, north of Amador Street, and south of Islais Creek channel

Assessor's Block(s) and Lot(s): Seawall Lot 344 (A portion of Assessor's Block 4502A).

City and County: San Francisco

Project Summary: The proposal is to develop a small concrete batch plant on Wharf 90, located just south of Islais Creek Channel and east of Third Street. Property would be leased by Bedrock Concrete, Inc., from the Port of San Francisco. The lease period would be for five years, which is considered an interim use by the Port and the Bay Conservation and Development Commission (BCDC).

Building Permit Application Number, if Applicable: Port issues their own permits.

THIS PROJECT COULD NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. This finding is based upon the criteria of the Guidelines of the State Secretary for Resources, Sections 15064 (Determining Significant Effect), 15065 (Mandatory Findings of Significance) and 15070 (Decision to Prepare a Negative Declaration), and the following reasons as documented in the Initial Evaluation (Initial Study) for the project, which is attached. - OVER -

---

Mitigation measures, if any, included in this project to avoid potentially significant effects: -NONE-

---

FINAL NEGATIVE DECLARATION issued on: January 19 1996

In the independent judgement of the Department of City Planning, there is no substantial evidence that the project could have a significant effect on the environment.

---

cc: Robert Passmore
Monica Jacobs (1st page only)
Distribution List
Port of San Francisco:
Neil Sekhri
Joe Wyman
Roberta Jones
Master Decision File
Bulletin Board

Barbara W. Sahm

Barbara W. Sahm
Environmental Review Officer

Project Description: The proposal is to develop a small concrete batch plant on Wharf 90, located just south of Islais Creek Channel and east of Third Street. Property would be leased by Bedrock Concrete, Inc., from the Port of San Francisco. The lease period would be for five years, which is considered an interim use by the Port and the Bay Conservation and Development Commission (BCDC). The site of 31,000 square feet is paved with asphalt and would be completely enclosed by a six foot high cyclone fence. No permanent construction is proposed. The operation would require: concrete mixing and hauling trucks; a loading ramp/conveyor to move the product components into the mixer; water; a containment area for excess concrete and rinse water; storage bins for aggregate, sand and gravel; an enclosed storage place for sacks of cement, miscellaneous tools and equipment; and a small office. All related equipment and the two concrete mixing trucks would be stored on the site. There would be two 240 square foot trailers utilized, one for the office and the other for the sacks of cement, tools and other small portable equipment.

The trucks would both mix the product and haul it to the delivery point. The maximum barrel capacity of the concrete mixers is nine cubic yards each. It is anticpated that there would be no more than two trucks, each making an average of three round trips per day. The loading ramp/conveyor belt would be approximately 25 feet long and 13-15 feet high. Water usage is expected to be about 230 gallons per day. The water would be stored in two 2000 gallon, above ground, portable tanks. A containment area is proposed for both the rinse water from cleaning the drums at the end of the day and any small quantities of "leftover product" (if too much is ordered or mixed). The containment area would be made of concrete block with estimated dimensions of 15 feet by 15 feet by three feet high. When there is a buildup of leftover product it may be hauled to a quarry to be used as land fill. According to the project sponsor, it is a common practice in the industry to recycle "leftover" product by using it to fill a quarry site.[1] There are other methods of handling leftover product which include using an additive within the truck which allows the concrete to be used the next day. It is also possible to manufacture, on site, concrete blocks out of which bins could be constructed for use at the facility.

Aggregate, sand and gravel, used in the preparation of the product would be stored on site in bins made of concrete block. Each bin would be about 2 1/2 feet by 2 1/2 feet by 5 feet; four are anticipated. This operation is expected by the applicants to produce and haul an estimated 54 cubic yards per day.

Site Location: The proposed facility would be located on a site that is slightly less than an acre within an 11 acre parcel of property under the jurisdiction of the Port of San Francisco. Amador Street, located to the south of the site provides access to it. The Third Street and Cargo Way intersection is on the west, and the Islais Creek Channel is to the north. (See Figure 1.) The streets and the channel are appproximately 300 feet from this parcel. The site is separated from Islais Creek by the Port's maintenance storage yard containing spur railroad tracks that service the container terminal. (See Figure 2.) The freight rail tracks, and storage rail tracks are adjacent to the northern boundary of the site. There are only occasional runs on this rail line during the anticipated daytime hours of the operation.

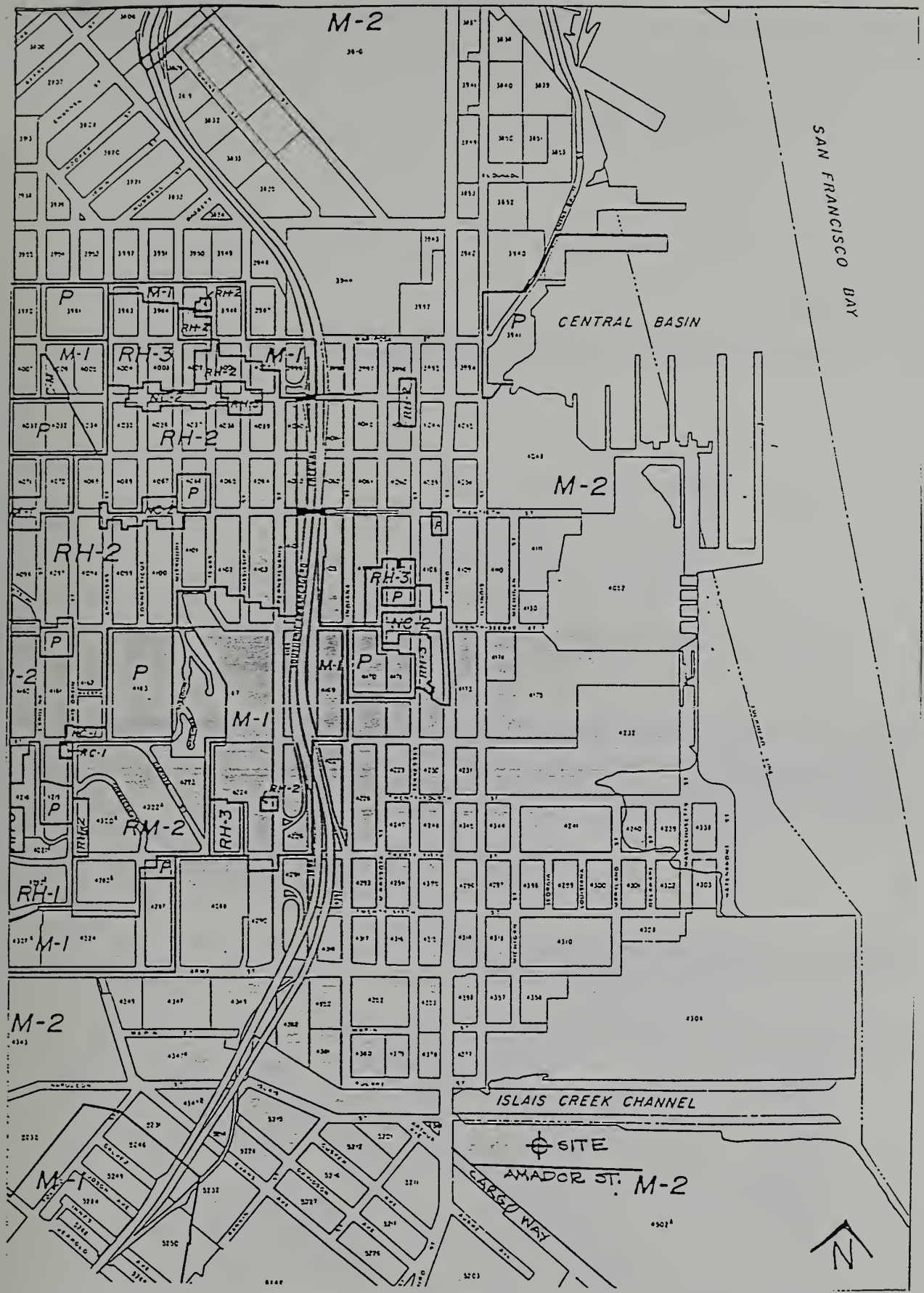


Figure 1: Zoning on the Site and in the Vicinity

Source: SF Planning Dept.

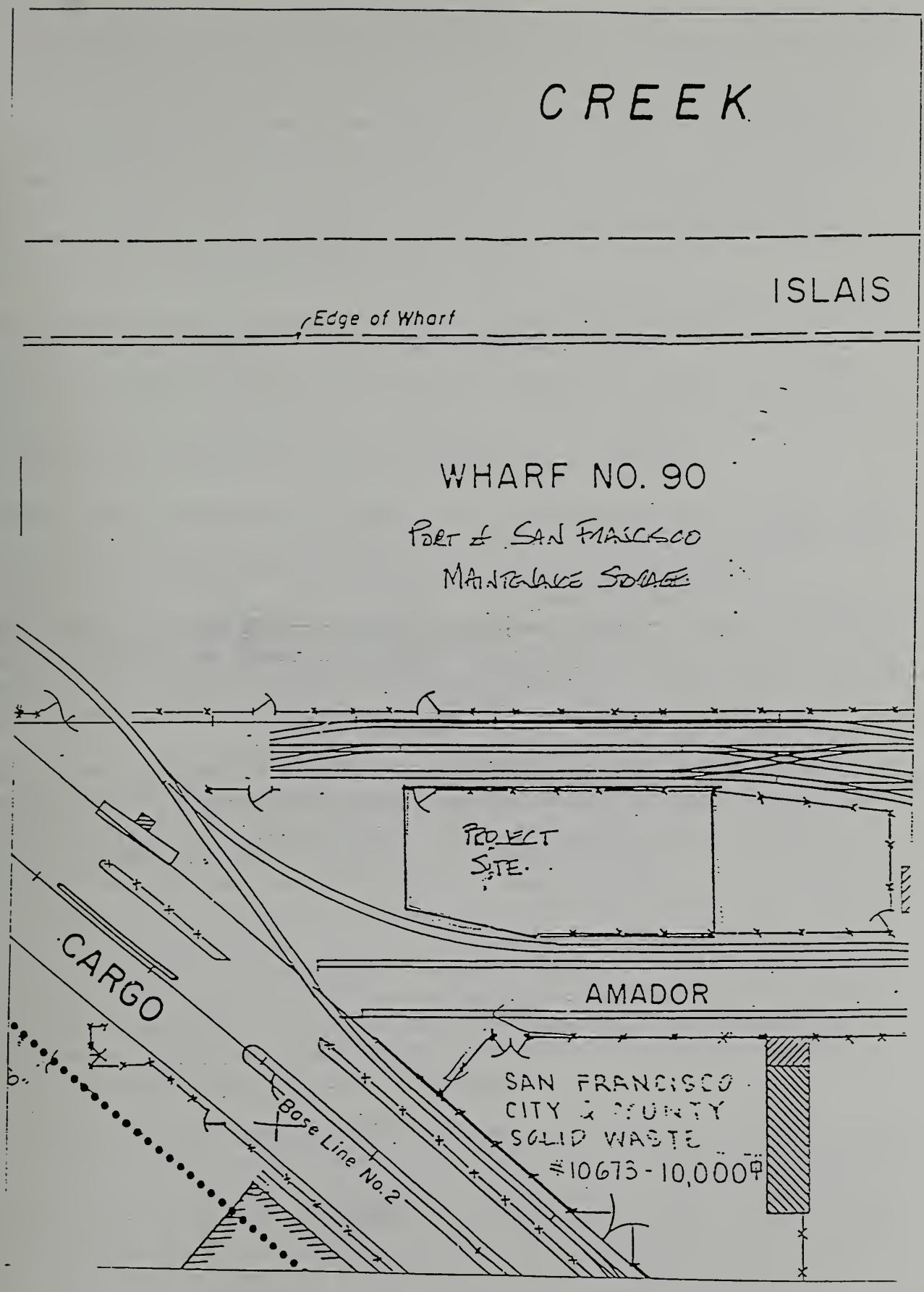


Figure 2: Site Location and Surrounding Uses Source: Port of S.F.

This is an industrial area zoned M-2 (Heavy Industrial). M-2 industrial districts are the least restricted as to use and are located at the eastern edge of the City. This specific site is separated by several blocks from residential and commercial areas located to the west. Please see **Figure 1** showing the zoning on the site and the surrounding area. In the M-2 zones, heavier industries are permitted uses with fewer requirements as to screening and enclosure than in M-1 Districts. The closest industrial structures and buildings are to the northeast and include the now vacant grain terminal, a fishmeal shed and tallow works.[2] South and across Amador Street is a maintenance facility of the City andCounty of San Francisco's Department of Public Works. There is an active firehouse fronting on Third Street which is approximately 600 feet to the northwest.

Facility Design: The City Planning Code requires that the entire facility be enclosed with a fence of at least six feet in height. Fencing of the site would occur before the trailers, containment area, storage bins, and other equipment would be put in place or constructed. A gate for ingress and egress from the facility would be positioned along the Amador Street (southern) boundary of the site. Parking for workers' vehicles and trucks would be on site. Adequate loading and turning area would be designated for the mixers and other rigs that would haul materials in and out.

Concrete/Aggregate Manufacture, Transport and Cleanup Procedures: Raw materials are moved by the conveyor belt and mixed in the drum of the concrete truck. The same truck then delivers the concrete to the customer, and the vehicle returns to the site to be rinsed out and reloaded. As indicated above, the maximum capacity of a mixer is 9 cubic yards. It is the intention of the operator of this plant to service only small jobs. The maximum volume of concrete per month would be in the range of 1080 cubic yards.[3] Delivery trucks would transport in the raw materials of aggregate, sand, and binder which would be stored on site and mixed as required by job. Storage on site of materials would be limited to the capacity of the four 2 1/2 x 2 1/2 storage bins described above.

There are two existing drains on the lot that connect to the City's combined sewer/storm water drainage system. The Port's engineering staff has stated that these must be capped. The drains run to the east of the site to a pump station located on the tallow works facility. This issue was discussed with a Port Engineer, the proposed tenant and the Port's Regulatory Specialist [4]. Any runoff from the operation or rains would be contained within the site by existing topography and structures; ponding or excess water would be pumped into the waste containment structure (described on page 2) made of concrete block. While at present recycled water is not available, eventually it is proposed to use "gray water" to manufacture the product and rinse the equipment. Some of the water contained in the holding area would be used for these purposes after extra product has settled out. No waste water from this batch plant proposal would be allowed to be discharged into the City's combined storm water/sewer system. Monitoring of the discharge from this plant would be the responsibility of the Port under their Storm Water Pollution Prevention Program.

The batch plant operation would require a permit from the Bay Area Air Quality Management District (BAAQMD)and must be managed in accordance with the standards and requirements of Regulation 8, Rule 40 of the BAAQMD. The throughputs, fuel, materials consumption, capacities, and hours of operation described in the ministerial Air Quality Permit granted to the operator of the facility would be the maximum allowed. Use of a dust suppressant chemical, or a device to contain dust from the mixing operation, and/or sprinkling of the site could be required by BAAQMD. A change in the parameters, quantities, or raw materials to be handled would require a new permit from the BAAQMD. [5] The project would be required to file a notice of intent and seek a General Permit from

the BAAQMD under the State's Industrial Waste Regulations but the monitoring of the operation would be the responsibility of the Port staff.

POTENTIAL ENVIRONMENTAL EFFECTS

Land Use and Visual Quality: The site currently has no structures on it and is paved. The industrial uses within 1,000 feet of the site include: railroad tracks; large paved areas for shipping container storage; a grain processing facility(vacant) which includes large storage silos that are a visually prominent marker of the industrial nature of the area; a fishmeal processing shed, and a tallow processing plant. The site is located on filled land; there are no areas that could be considered natural. The development of the proposed project would not involve any new permanent structures. The proposed temporary use of the site is consistent with the existing industrial character of the area and would not result in adverse effects on land use in the vicinity or the visual quality of the site or surrounding properties.

Public Services and Utilities: The proposed project would not result in a substantial increased demand for or expansion of public services or utilities. After construction of the fence, the holding pond for water and leftover product would be constructed and the City sewer drains would be capped. A connection may be made to the City's waterlines. This work would be done in compliance with all applicable City requirements and permits. Portable toilets would be provided for site workers.

Traffic and Transportation: Transportation of materials to and from the site would result in a minor amount of additional truck traffic in the northern area of the Third Street corridor. Ingress and egress to the site would be via Amador Street from Third Street. The traffic generated by the facility would be a combination of the two cement mixer trucks, dump trucks that would periodically deliver sand and gravel, and workers' cars. Based on the project sponsor's estimate, truck trips to and from the site would be in the range of 12 to 24 trip ends per day. This projected number is not large enough to be noticed within the existing levels of truck and vehicular traffic to this industrial area. The projected minimal additional number of daily trip ends from this proposal would not change the operative levels of service or be considered a significant addition to the existing or projected conditions.

Noise: The project site is located in an industrial area. Land adjacent to the site to the south and east is vacant. An inoperative grain terminal and tallow plant are located east of the site and railroad tracks and right-of-way are located to the north and south. No noise-sensitive land uses are located within 1,000 feet of the project site. No background noise measurements are available for the project site or immediate vicinity.

There would be project-related noise associated with the use of the heavy equipment such as the conveyor and the mixing truck. This type of equipment generally produces noise that ranges from 70 to 85 dBA (A-weighted decibel level) at a distance of 50 feet.
Construction noise in the City and County of San Francisco is regulated by the City's Noise Ordinance (Ordinance No. 274-72). The noise ordinance restricts construction and industrial noise to the hours between 7 AM and 8 PM if the noise of the construction exceeds the background noise level by 5 dBA. The project is not expected to substantially increase the ambient noise levels in this industrial area.

Water Quality: The proposed project site is located close to the margin of San Francisco Bay, approximately 300 feet south of the Islais Creek Channel. The Bay and Channel are the receiving waters for surface water runoff from the surrounding area. The water quality of San Francisco Bay and the Islais Creek Channel are impacted by municipal and industrial dischargers. The analysis of sediment samples collected from near the point where the Islais Creek Channel enters the Bay indicates that the sediments in this area of the Bay contain elevated levels of heavy metals.[6] The project site is located on the back portion of the Pier 94 landfill that was in operation from the early 1960's to 1977.

The Port's Engineering staff have determined that the railroad beds located on either side of the site, and the site topography, would ensure that runoff from the site was captured and that there is no danger to Bay waters, nor is it necessary or desirable to provide drainage into the City's combined sewer system.

Air Quality: The operation requires a permit from the Bay Area Air Quality Management District. On the basis of information previously furnished to the BAAQMD, a ministerial permit would be granted to construct and start up the project. The review by the BAAQMD of the permit application and any conditions attached to this permit regarding construction and operation techniques assure that air quality standards would not be violated.

Biological Resources: The proposed project site would occupy paved vacant land within an industrial area. Wildlife use of the site appears to be minimal due to the extent of the distrubance that has occured to the site, and the absence of cover and foliage. Furthermore, no endangered or rare plants or animals have been identified at the site. Therefore, the proposed project would not result in any significant adverse effects on biological resources.

Geology/Seismicity: The site is located within a seismically active area of northern California. The most significant seismic event expected to affect the project site would occur on the San Andreas fault. The nature of the soils underlying the site and the shallow groundwater indicate that violent ground shaking and liquefaction are likely. Potentially damaging earthquakes could also occur on other Bay Area faults, but these events would produce lower expected seismic shaking at the site than the maximum credible earthquake on the San Andreas. There would be no excavation or change in the topography of the site. There would be no permanent structures constructed on the site, nor would the project attract a large number of people to the site. Hence, the project would not expose people or structures to major geologic hazards.

Hazardous Materials: The project site is located within the area regulated by Article 20, Section 1000 et.seq. of the San Francisco Public Works Code, also known as the Maher Ordinance. Projects located bayward of the historic high-tide line that involve disturbance of at least 50 cubic yards of soil must comply with Article 20 of the San Francisco Public Works Code which requires analysis of the site for the possiblility of hazardous materials in the soil, and the preparation of a site mitigation report if deemed necessary by the Department of Public Health. However, since there would be no excavation required for this project, there is no potential for encountering or disturbing contaminated soils, and the the Maher Ordinance requirements are not triggered.

Permits and Approvals: For the Applicant and the Port Commission to be able to finalize the lease, as described above, a permit would be required from the BAAQMD, and a review by the BCDC Staff

to verify that this proposal would be an acceptable interim use on port priority land would be required. Other permits and approvals required from the Port would include: San Francisco Port Commission approval of a leasing agreement between the Port and the operator; Port engineering office approval of drainage, grading and building permits;

While the project site is located more than 100 feet from the shore of San Francisco Bay and is therefore outside the shoreline band jurisdiction of the BCDC, the area of the site is included in the BCDC/MTC Seaport Plan study area. In that study, the area which included the site was identified as a "Port-Priority Use Area." The recommended uses for facilities within the Port-Priority Use Areas are those that offer support to the maritime activities at the Port. This proposed temporary use would not constitute a maritime support activity. However, as a temporary use involving no permanent structures, it would not preclude maritime support uses either on the rest of Wharf 90, or on the project site in the future; acknowledgement of these findings would be sought from BCDC.

Conclusions:

The proposed project is consistent with all applicable zoning controls. No variance or other special planning authorization is needed. While the project is located on Port Land, as a temporary use it would not conflict with Proposition H passed by the voters of San Francisco in November of 1990. While local concerns or other planning considerations may be grounds for modification or denial of the proposal there is no substantial evidence that the project could have a significant effect on the environment.

ENDNOTES

1. There is, for example an active quarry site in the east bay from which the sponsor intends to purchase gravel and sand for the product. Fill material could be returned to that site.

2. Skip Zeller, a Port Maintenance and Utilities Engineer, states that The 1989 Loma Prieta Earthquake damaged these structures to such an extent that they cannot be used any longer.

3. Based on tonnages and truck trips anticipated by the proposed operator of the facility.

4. Meeting held with Port Engineer Skip Zeller, Regulatory Specialist Roberta Jones, Project Applicant, and Sharon Rogers representing the Office of Environmental Review, Planning Department on October 26, 1995.

5. Regulations of the BAAQMD cited in the District's Air Quality permit application.

6. Geo/Resource Consultants, Inc.. and the MARK Group. 1988 Work Plan , Subchapter 15 Compliance, Pier 94 Solid Waste Disposal Site, Volume IV. Unpublished report prepared for the Port of San Francisco.

ENVIRONMENTAL EVALUATION CHECKLIST
(Initial Study)

File No: 95.319E Title: Small Ready-Mix Outdoor Plant (Concrete Batch Plant)

Street Address: Pier 90 - East of Cargo Way Assessor's Block/Lot: SWL 344 Potion AB 4502A

Initial Study Prepared by: Marion Rogers

A. COMPATIBILITY WITH EXISTING ZONING AND PLANS	Not Applicable	Discussed
1) Discuss any variances, special authorizations, or changes proposed to the City Planning Code or Zoning Map, if applicable.	—	✓
*2) Discuss any conflicts with any adopted environmental plans and goals of the City or Region, if applicable.	—	✓

B. ENVIRONMENTAL EFFECTS - Could the project:	YES	NO	DISCUSSED
1) Land Use			
*(a) Disrupt or divide the physical arrangement of an established community?	—	✓	✓
*(b) Have any substantial impact upon the existing character of the vicinity?	—	✓	✓
2) Visual Quality			
*(a) Have a substantial, demonstrable negative aesthetic effect?	—	✓	✓
(b) Substantially degrade or obstruct any scenic view or vista now observed from public areas?	—	✓	—
(c) Generate obtrusive light or glare substantially impacting other properties?	—	✓	—
3) Population			
*(a) Induce substantial growth or concentration of population?	—	✓	—
*(b) Displace a large number of people (involving either housing or employment)?	—	✓	—
(c) Create a substantial demand for additional housing in San Francisco, or substantially reduce the housing supply?	—	✓	—
4) Transportation/Circulation			
*(a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system?	—	✓	✓
(b) Interfere with existing transportation systems, causing substantial alterations to circulation patterns or major traffic hazards?	—	✓	—

* Derived from State EIR Guidelines, Appendix G, normally significant effect.

	YES	NO	DISCUSSED
(c) Cause a substantial increase in transit demand which cannot be accommodated by existing or proposed transit capacity?	—	✓	—
(d) Cause a substantial increase in parking demand which cannot be accommodated by existing parking facilities?	—	✓	—
5) Noise			
*(a) Increase substantially the ambient noise levels for adjoining areas?	—	✓	✓
(b) Violate Title 24 Noise Insulation Standards, if applicable?	—	✓	—
(c) Be substantially impacted by existing noise levels?	—	✓	—
6) Air Quality/Climate			
*(a) Violate any ambient air quality standard or contribute substantially to an existing or projected air quality violation?	—	✓	✓
*(b) Expose sensitive receptors to substantial pollutant concentrations?	—	✓	—
(c) Permeate its vicinity with objectionable odors?	—	✓	—
(d) Alter wind, moisture or temperature (including sun shading effects) so as to substantially affect public areas, or change the climate either in the community or region?	—	✓	—
7) Utilities/Public Services			
*(a) Breach published national, state or local standards relating to solid waste or litter control?	—	✓	—
*(b) Extend a sewer trunk line with capacity to serve new development?	—	✓	—
(c) Substantially increase demand for schools, recreation or other public facilities?	—	✓	—
(d) Require major expansion of power, water, or communications facilities?	—	✓	✓
8) Biology			
*(a) Substantially affect a rare or endangered species of animal or plant or the habitat of the species?	—	✓	—
*(b) Substantially diminish habitat for fish, wildlife or plants, or interfere substantially with the movement of any resident or migratory fish or wildlife species?	—	✓	✓
(c) Require removal of substantial numbers of mature, scenic trees?	—	✓	—
9) Geology/Topography			
*(a) Expose people or structures to major geologic hazards (slides, subsidence, erosion and liquefaction).	—	✓	—
(b) Change substantially the topography or any unique geologic or physical features of the site?	—	✓	✓

	YES	NO	DISCUSSED
10) Water			
*(a) Substantially degrade water quality, or contaminate a public water supply?	___	✓	✓
*(b) Substantially degrade or deplete ground water resources, or interfere substantially with ground water recharge?	___	✓	___
*(c) Cause substantial flooding, erosion or siltation?	___	✓	___
11) Energy/Natural Resources			
*(a) Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?	___	✓	___
(b) Have a substantial effect on the potential use, extraction, or depletion of a natural resource?	___	✓	___
12) Hazards			
*(a) Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected?	___	✓	✓
*(b) Interfere with emergency response plans or emergency evacuation plans?	___	✓	___
(c) Create a potentially substantial fire hazard?	___	✓	___
13) Cultural			
*(a) Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethnic or social group; or a paleontological site except as a part of a scientific study?	___	✓	___
(b) Conflict with established recreational, educational, religious or scientific uses of the area?	___	✓	___
(c) Conflict with the preservation of buildings subject to the provisions of Article 10 or Article 11 of the City Planning Code?	___	✓	___

C. OTHER	YES	NO	DISCUSSED
Require approval and/or permits from City Departments other than Department of City Planning or Bureau of Building Inspection, or from Regional, State or Federal Agencies?	___	___	✓

D. MITIGATION MEASURES	YES	NO	N/A	DISCUSSED
1) Could the project have significant effects if mitigation measures are not included in the project?	___	___	✓	___
2) Are all mitigation measures necessary to eliminate significant effects included in the project?	___	___	✓	___

E. MANDATORY FINDINGS OF SIGNIFICANCE

		YES	NO	DISCUSSED
*1)	Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or pre-history?	___	✓	___
*2)	Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?	___	✓	___
*3)	Does the project have possible environmental effects which are individually limited, but cumulatively considerable? (Analyze in the light of past projects, other current projects, and probable future projects.)	___	✓	___
*4)	Would the project cause substantial adverse effects on human beings, either directly or indirectly?	___	✓	___

F. ON THE BASIS OF THIS INITIAL STUDY

✓ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared by the Department of City Planning.

___ I find that although the proposed project could have a significant effect on the environment, there WILL NOT be a significant effect in this case because the mitigation measures, numbers _____, in the discussion have been included as part of the proposed project. A NEGATIVE DECLARATION will be prepared.

___ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Barbara W. Sahm

BARBARA W. SAHM
Environmental Review Officer
for

LUCIAN R. BLAZEJ
Director of Planning

DATE: Nov 30, 1995

BWS:OER/23/4-13-92

Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

RECEIVED
JAN 04 1996
CITY & COUNTY OF S.F.
DEPT OF CITY PLANNING

January 3, 1996

SHARON ROGERS
PLANNING DEPT - OER - CCSF
1660 MISSION STREET, 5TH FLOOR
SAN FRANCISCO, CA 94103-2414

Subject: BEDROCK CONCRETE BATCH PLANT SCH #: 95123005

Dear SHARON ROGERS:

The State Clearinghouse submitted the above named environmental document to selected state agencies for review. The review period is closed and none of the state agencies have comments. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call at (916) 445-0613 if you have any questions regarding the environmental review process. When contacting the Clearinghouse in this matter, please use the eight-digit State Clearinghouse number so that we may respond promptly.

Sincerely,

Antero A. Rivasplata

ANTERO A. RIVASPLATA
Chief, State Clearinghouse

City & County of S.F.
Dept. of City Planing

JAN 4 - 1996

OFFICE OF
ENVIRONMENTAL REVIEW

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

February 5, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: **Approval of Contract Amendment for the Duffey Company, for additional analysis to complete the Environmental Impact Report for the Hyde Street Fishing Harbor**

DIRECTOR'S RECOMMENDATION: APPROVE THE PROPOSED CONTRACT AMENDMENT

In September 1994, the Commission approved a contract with the Duffey Company for $200,137 to prepare an Environmental Impact Report (EIR) for the Hyde Street Fishing Harbor and new uses on Pier 45 in Sheds A and C. Work on the EIR began in January 1995, and a Draft EIR is expected in March of this year. The key issues being analyzed in the EIR are traffic and water quality impacts. The City's Office of Environmental Review which oversees the preparation of EIRs for the City and County of San Francisco, requested changes in the scope of work to increase the viability of the EIR. These include: (1) augmenting the traffic study to analyze additional intersections and study times; and (2) performing water quality sampling to establish baseline conditions in the harbor area. The Commission was notified of these changes in May 1995, and the need for a future contract amendment.

The change in the scope of work has resulted in additional fees of $58,461, increasing the total contract amount to $258,598. Sufficient funds have been allocated to this project in the Capitol Plan to cover this amendment. The amount of the contract amendment dedicated to HRC certified minority or women owned firms is 57 percent.

Prepared by: Sharon Lee Polledri
Director, Planning and Development

THIS PRINT COVERS CALENDAR ITEM NO. 7A

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-18

WHEREAS, the Hyde Street Fishing Harbor is a new facility proposed to provide berthing for the commercial fishing industry at Fisherman's Wharf; and

WHEREAS, the Port entered into a contract with the Duffey Company for $200,137 to prepare an Environmental Impact Report (EIR) for the Hyde Street Fishing Harbor; and

WHEREAS, the public will have opportunities to review and comment on the Draft EIR prior to its anticipated certification in the summer of 1996; and

WHEREAS, preparation of a water quality sampling program and additional traffic analysis were added to the Duffey Company's scope of work to ensure evaluation of all foreseeable environmental impacts; and

WHEREAS, that the Port Commission approves amending the Environmental Impact Report contract for the team led by the Duffey Company, for an additional $58,461, increasing the total contract amount to $258,598.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 13, 1996.

_____
Secretary

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94---
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

February 13, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Preston Cook
Hon. Francis J. O'Neill

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of FY 1996/97 Operating Budget

DIRECTOR'S RECOMMENDATION: APPROVE THE FY 1996/97 OPERATING BUDGET

The proposed FY 1996/97 Operating Budget is summarized as follows:

	1995/96	1996/97	Increase/ Decrease	Percent
Revenue	$32,593,165	$33,944,921	$1,351,756	4.1%
Expense	31,859,529	33,622,520	1,762,991	5.5%
Surplus	$ 733,636	$ 322,401	$(411,235)	(56.1%)

THIS PRINT COVERS CALENDAR ITEM NO. 8A

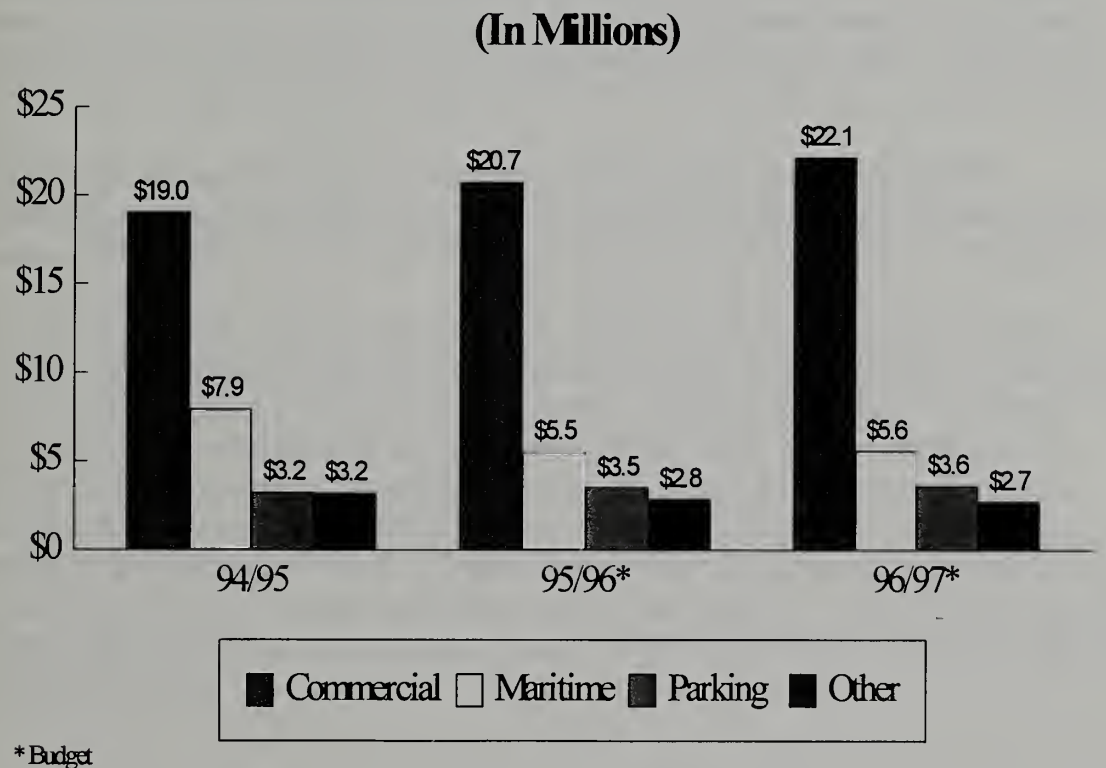
Strategic Plan

The strategic plan contained in the 1996/97 budget has been revised and includes a Mission, Goals, and Strategies. The strategic plan was last updated in 1990.

Revenue

The proposed revenue budget of $33.9 million for FY 96/97 is a $1.4 million increase (4.1%) over the prior fiscal year. Commercial and industrial rent is projected to increase $1.4 million to $22.1 million in FY 96/97 primarily due to new and renegotiated leases. Approximately half of the $1.5 million revenue from new and renegotiated leases is due to recently signed leases and negotiations currently underway. Maritime revenues are projected to increase $56,600 to $5.6 million. Maritime revenue includes cargo, ship repair, harbor services, cruise, fishing and other marine revenue. Parking revenue is projected to increase slightly ($14,600) to $3.6 million. Parking revenue estimates assume all parking stalls will be fully operational. FY 95/96 parking revenue projections assumed that stalls in northern pier lots would be leased out. All other revenue is projected to decrease slightly ($134,877) to $2.7 million. All other revenue includes power, filming, facility damage, tenant services, permits, interest on investments, penalties, service charges and other miscellaneous revenue. All other revenue is projected to decrease primarily due to interest on investments that are projected to decline based the capital spending plan.

A three year revenue comparison is displayed below:



*Budget

Expense

The proposed expense budget of $33.6 million for FY 96/97 is a $1.8 million increase (5.5%) over the prior fiscal year. Personnel costs are projected to increase $1.4 million (9.3%) to $14.9 million as a result of:

- known salary increases for FY 96/97
- a provision for anticipated increases not yet negotiated
- 7 new positions
- 5 reclassified positions
- 1 position transferred from bond funds
- 3 positions fully funded
- increased employer contributions to retirement and health benefits

Other current expenses are projected to increase by $239,049 to $3.5 million primarily due to increased maintenance and utility costs for the Roundhouse Plaza and Fisherman's Wharf Seafood Center at Pier 45.

Fixed charges are projected to fall $442,066 to $258,700. This decrease is primarily due to lower projected judgement and claims expenses. A one time settlement of $404,000 was paid in FY 95/96.

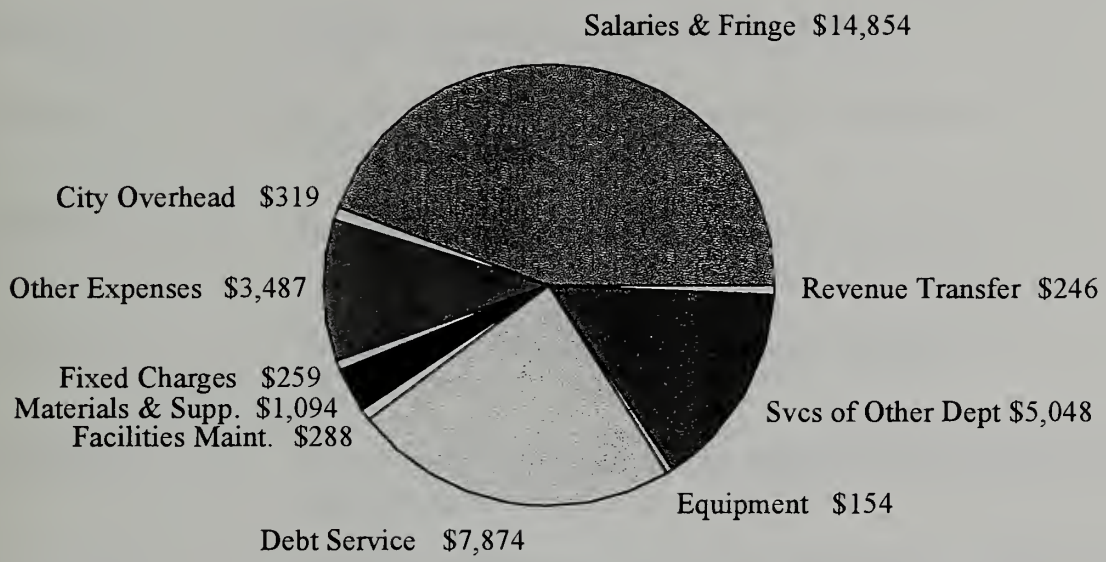
Capital equipment expense is projected to increase $123,090 to $154,103. Equipment expense is increasing due to the transfer of computer equipment costs to the operating budget from the capital budget as well as additional equipment requests. Bond funds were used to purchase computer equipment in FY 95/96, which are no longer available.

Facilities Maintenance expense is projected to decrease $103,000 to $288,000. Groundwater monitoring expense included in last year's budget is not included this year because sufficient funds from prior years is encumbered and available for this project.

Expense for services of other departments is projected to increase $415,243 to $5.0 million. CAO insurance is projected to decrease $115,000 to $835,000 due to the renewal of insurance premiums at lower cost. City Attorney expense is projected to increase $223,100 to $923,100 based on actual expense for FY 94/95 and the transfer of Waterfront Plan expense to the operating budget from the capital budget. Workers compensation expense is projected to increase $175,000 to $400,000 based on actual expense of $370,000 in FY 94/95. Expense for all other departments is projected to increase $115,855 to $1.1 million primarily due to the transfer of City Planning expense for the Waterfront Plan to the operating budget, where bond funds used in FY 95/96 are no longer available.

Expense for FY 96/97 is as follows:

(In Thousands)



Prepared by: Ben Kutnick

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-17

WHEREAS,	staff has developed an operating budget; and
WHEREAS,	the operating budget includes projected revenues of $33,944,921; and
WHEREAS,	the operating budget includes projected expenses of $33,622,520; and
WHEREAS,	the operating budget includes projected surplus of $322,401; and
WHEREAS,	the operating budget includes an updated strategic plan for the Port of San Francisco; and
WHEREAS,	the operating budget must also be approved by the Mayor and the Board of Supervisors; therefore, be it
RESOLVED,	that the Port Commission approves the operating budget as prepared by staff.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 13, 1996.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

February 6, 1996

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Supplemental Appropriation for Purchase of Replacement Vehicles

DIRECTOR'S RECOMMENDATION: APPROVE SUPPLEMENTAL APPROPRIATION

Staff is requesting approval for a Supplemental Appropriation in the amount of $140,000 from Operating Fund Surplus to fund the purchase of six replacement vehicles. This includes: one utility vehicle, one van and four trucks.

Since the approval of the Capital Plan 1995/96 last May, the City and County of San Francisco has adopted a policy which requires Board of Supervisors' approval for passenger vehicle purchases; hence, the need for this Supplemental Appropriation. (A total of approximately $210,000 of the $350,000 approved in the Capital Plan 1995/96 has been spent on non-passenger vehicles.)

A complete list of replacement vehicles, descriptions and usages are provided below:

1. **Utility Vehicle - $21,000**

   Description: 2-wheel drive, 4 doors, rear tailgate, 6-cylinder and 4.0 liter minimum.

   Usage: Assigned to Facilities and Operations for transportation and field work.

   Replaces: This vehicle replaces a 1974 Chevy C-10 ½ ton pick-up with 119,000 miles which is out of service.

THIS PRINT COVERS CALENDAR ITEM NO. **8B**

2. **Van - $23,000**

Description: Regular club wagon or equivalent with 8 passenger seating, sliding side door windows on all sides.

Usage: Assigned to Tenant Services and Marketing staffs for field visits and transportation of prospective tenants to locations around the Port.

Replaces: This vehicle replaces a 1980 Ford with 157,000 miles which is out of service.

3. **Truck #1 - $21,000**

Description: 1 ton pick-up.

Usage: Assigned to Asphalt Crew for transportation of staff and supplies to various job sites.

Replaces: This vehicle replaces a 1978 Dodge D-200 ½ ton pick-up with 80,000 which is out of service.

4. **Truck #2 - $18,000**

Description: 3/4 ton pick-up with fleetside box.

Usage: Assigned to Painting Crew for transportation of staff and supplies to various job sites.

Replaces: This vehicle replaces a 1976 Dodge D-100 ½ ton pick-up with 84,000 miles which is out of service.

5. **Truck #3 - $30,000**

Description: 1 ton crew cab pick-up.

Usage: Assigned to Laborers for transportation to various job sites.

Replaces: This vehicle replaces a 1966 Chevy 1-ton pick-up with 108,000 miles which is out of service.

6. **Truck #4 - $27,000**

Description: 1 ton pick-up with utility bed.

Usage: Assigned to Plumbing Crew for transportation of staff and supplies to various job sites.

Replaces: This vehicle replaces a 1966 Ford C-600 flat bed dump with 142,000 miles which is out of service.

Your approval is respectfully requested.

Prepared by: Benjamin A. Kutnick
Director, Administration

PORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96 - 16

WHEREAS, a total of $350,000 was approved for the purchase of vehicles in the 1995/96 Capital Plan; and

WHEREAS, $210,000 has been spent on non-passenger vehicles; and

WHEREAS, the remaining cost of the project is estimated to be $140,000 which includes one utility vehicle, one van and four trucks; and

WHEREAS, it is now the policy of the City that all passenger vehicle purchases be approved by the Mayor and the Board of Supervisors; and

WHEREAS, it is the opinion of the Port Commission and staff that the vehicles will greatly benefit the Port; therefore be it

RESOLVED, that the Port Commission hereby approves the funding of this capital project from Operating Fund Surplus in the amount of $140,000.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of February 13, 1996.

_____

Commission Secretary

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

DOCUMENTS DEPT.

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MINUTES OF THE MEETING
FEBRUARY 13, 1996

1. ROLL CALL

The meeting was called to order by Commission President Michael Hardeman at 4:09 p.m. The following Commissioners were present: Michael Hardeman, Frankie Lee, Anne Halsted, Preston Cook and Francis O'Neill.

2. APPROVAL OF MINUTES - January 23, 1996

Commissioner Hardeman asked that the minutes be amended as follows: Page 3, the paragraph prior to Item 4 to read: Commissioner Hardeman added that Ms. Macmillan has done a great job on all projects assigned to her that she is familiar with.

He also wanted to clarify his statement earlier in the meeting that criticism of the Port by Mayor Brown for not being pro-maritime was directed at the Director and the Commissioners, not staff. The Mayor, in fact, stated he thought the Port has a wonderful staff.

ACTION: Commissioner O'Neill moved approval; Commissioner Halsted seconded the motion. All of the Commissioners were in favor; the minutes of the meeting, as amended, were adopted.

3. EXECUTIVE

A. Executive Director's Report: Mr. Bouey reported the following:

1) The Planning Department and Bob Tufts, Chairman of the Waterfront Plan Advisory Board, have scheduled the next advisory board meeting for Tuesday, March 5 from 4:30-6:30 p.m. Invitations to advisory board members will be sent out tomorrow.

2) Items 5A and 5B will be put over to the next meeting.

3) He mentioned a fax from the Mayor's office requesting the Commission's presence at an orientation program which will be held on Saturday, February 24, from 10:00 a.m. to 12:30 p.m. at the Herbst Theater, 401 Van Ness. He asked that the Commissioners communicate to the Commission Secretary their attendance at the orientation program so she can RSVP for them.

4) Mr. Bouey informed the Commission that the Port contracts out its janitorial service. However, under the City Charter, it's actually the Purchaser's office who contracts, not the Port. The apparent low bidder is a non-union firm. Several

allegations have been made against the performance of this firm and its treatment of workers. A letter was sent to the Purchaser's office requesting that they investigate these allegations to ensure that the lowest bidder is also a responsible bidder. At the same time, staff requested the Government & Efficiency Committee to continue this item until the Purchaser's office has had the opportunity to complete their investigation.

Commissioner Cook indicated that he received a letter from the SPCA Director to Jeff Sears, Waterfront Carriage. It expressed concerns about the working hours of the horses, deficiencies in care of the horses, the firm's refusal to provide the veterinarian records on the health of the horses and unwillingness to give 24-hour notice on carriage tours outside of the jurisdiction of the Port. He indicated that mistreatment of horses is a behavior that is not acceptable on Port property and would like staff to look into it and give the Commission a report.

Mr. Bouey stated that a copy of this letter was received late this morning and has been forwarded to the Property Management Division to make the appropriate inquiries.

B. Presentation by Joe Wyman regarding ferry service. Mr. Joe Wyman gave a presentation on trends and opportunities of ferry industry in the San Francisco Bay. He gave background on where the services are and what they are planning to do in the near future and also spoke about some opportunities that the Port of San Francisco has to influence and nurture the industry. To summarize the trend of the current industry, it would be one of a change in the operations and style of management and a projection of moderate growth. The management of ferry industry seems to have gone back to the past. Several communities have now taken on the management of public commuter ferry services from their respective communities. Alameda, the Port of Oakland and Vallejo have now entered into a five-year contractual arrangements with Marine Service Provider, the Blue and Gold Fleet, through a competitive bidding process. In the competitive bidding process, the communities gave additional points or preferences to service providers that could provide or demonstrate a secured landing facility at Fisherman's Wharf.

He also spoke about the services we now have and what they are planning to do. The Alameda/Oakland ferry service was started after the 1989 earthquake and as part of the Cypress corridor projects. They serve primarily from Jack London Square and the City of Alameda. Their ridership has increased 15%to 18% in each of the years they have provided ferry service. Their current total ridership is roughly 340,000 people a year. Plans for service improvements are: (1) to install a second floating barge at the foot of Clay Street, adjacent to the new Amtrak station and (2) to provide recreational trips on the weekends and midday service to Angel Island. The discussions with the Port of Oakland and City of Alameda about the Clay Street installation also point out that they have not made a decision on who could provide service to their particular new float. The City of Vallejo run, which happens to be the longest commute on San Francisco Bay, was started in 1986 after the completion of Marine World. Their ridership is up 15% in 94/95, to approximately 285,000. Their plans for service improvements are influencing Port plans for the downtown ferry terminal.

Commissioner Halsted thanked Mr. Wyman for his presentation and inquired what obstacles are foreseen for the development of this industry and how to address them. Mr. Wyman responded that it's the money. To provide an ADA accessible landing facility will add to the cost. The 90% construction estimate on the downtown ferry terminal, simply to put a barge in the water with ADA accessible ramps, is running anywhere from $1.7 million to $2 million. If the Port could identify key access points and find funding, this could be a way to stimulate water taxi service along San Francisco. Commissioner Halsted added that this will make a great asset as it is going to enhance the use of the waterfront, with the Bay Bridge at capacity and the impact of the ballpark is going to make it necessary to use the water as transportation. Mr. Wyman suggested the Port get involved with the Bay Bridge environmental studies and suggest ferry transit monies as mitigating traffic relief measures. He mentioned that the Port is close to having an environmental certification on the downtown ferry terminal project and being permitted for a master plan for the ferry terminal. The construction of the project is ready to commence as soon as monies become available. Commissioner Halsted commented that any use over and above what exists at Treasure Island now is going to have to depend on ferries.

Based upon Treasure Island's existing facilities, Commissioner O'Neill inquired how soon can we get something going. Mr. Wyman responded that it depends on the peaking characteristics of the usage. If your uses fall within the normal commute periods, you will strain the existing vessel fleet on the bay and there would be a need to provide additional boats. Commissioner O'Neill inquired about the landing facilities at Treasure Island. Mr. Wyman stated that the facilities are on the east side of the island, which adds about 10-15 minutes to trips coming to San Francisco. To put landing facilities on the other side of the island, you would need to build a breakwater which is $5-6 million and $2-3 million worth of landing facility.

Commissioner O'Neill thanked Mr. Wyman for his presentation and requested a copy of his presentation. Mr. Wyman replied that a copy will be sent to the Commission.

Commissioner Cook inquired about the economics behind the ferry service. Mr. Wyman replied that Tiburon is the only service that is not subsidized. All others have some form of a subsidy. Mr. Wyman confirmed that all of the governmentally owned and operated fleets are subsidized by taxpayers or grant funds.

Commissioner Halsted inquired if anyone has done any studies comparing the kinds of ferry services that could be in San Francisco. Mr. Wyman replied that an article appeared in the Wall Street Journal which states that Boston, New York, San Francisco and Washington State are reinventing the ferry industry as a cheaper mode of transportation to building a billion dollar bridges. He suggested calling for update to the regional ferry plan, which was adopted by MTC in 1991/92.

Commissioner Hardeman reiterated Commissioner O'Neill's request of a copy of Mr. Wyman's presentation.

4. LEGISLATIVE

5. TENANT & MARITIME SERVICES

A. Approval of percentage rental adjustments for Castagnola's, Fisherman's Grotto, Nick's Lighthouse, Sabella & LaTorre, Tarantino's, Cresci's Brothers, Franciscan Restaurant and Guardino's at Fisherman's Wharf. (Resolution No. 96-03) **(This item has been put over.)**

B. Approval of Reaffirmation and First Amendment to Lease and Consent to Encumbrance with Bundox, Inc., dba the Waterfront Restaurant, at Pier 7-½ (Resolution No. 96-15) **(This item has been put over.)**

C. Adoption of Finding of Negative Declaration and Approval of Lease with Carl Ernst, Jr. and Pier 38 Maritime Recreation Center, Inc. for a 20-year 9-month term with three 5-year options for a maritime recreation center at Pier 38 (Resolution No. 96-20)

Mr. Bouey stated that this item was before the Commission in August 1995 and a resolution was approved for an exclusive right to negotiate. He reminded the Commission that if we were a private entity we would simply sign the lease and then have the tenant secure the CEQA. Since we're a public agency, the process is vice versa. The lease is consistent with the draft Waterfront Plan. It is a maritime recreation center; it involves a number of activities such as dryboat storage, launching facility, transit berthing, small boat rental, maritime recreation, equipment rental, new and used boat sales, casual and full service dining. As well, it prohibits a number of usage such as boat excursion services, sight seeing tours, dinner/cocktail cruises, water taxi services, etc. When this exclusive right to negotiate was entered into, it was the proposed tenant's obligation to procure the negative declaration from City Planning, which he has done. He mentioned that Nic Dempsey, who negotiated the lease on the behalf of the Port and Mr. Ernst, representing MRC, are available to answer any of the Commission's questions.

Commissioner Halsted encouraged MRC to be aggressive in obtaining the best operator possible for the restaurant. Commissioner O'Neill inquired about water taxi service being a prohibitive use as he encourages this type of activity and if it this will preclude a possible stop in the future. Mr. Bouey responded that the Port would like to bid the water taxi service as opposed to having an existing tenant go into business himself.

Mr. Ernie Meriweather, representing We the People Television Corporation, stated that they have presented, since 1994, their plans for Pier 38 and was somewhat amazed how fast another company has come in. They have plans for Pier 38 that will involve the whole San Francisco community. He requested the Commission to delay the action on Pier 38 for 30 days.

Mr. Bouey responded that he met with representatives of We the People prior to August 1995. Subsequent to this item last appearing on the calendar, Mr. Bouey met with Mr. Meriweather and another gentleman and again explained to them that under Proposition H, commercial development is prohibited and that only maritime development is permitted. Their proposed commercial use of Pier 38 cannot be

approved until after the Waterfront Plan is adopted and the restrictions of Proposition H were removed. He reiterated that Mr. Ernst's proposal is a maritime proposal and is, therefore, not restricted by Proposition H.

Commissioner Halsted commented that the process would be different if it were for commercial use, i.e., it would go through a bidding process. Mr. Bouey confirmed Commissioner Halsted's comment and added that it's the desire of this Commission to give preference to MBEs and WBEs.

Commissioner Cook asked Mr. Meriweather if he had approached the Port for an alternative location that would be more appropriate for a non-maritime use. Mr. Meriweather replied to the negative and added that at some point in time they would be interested but at the present time, he's requesting the Commission to review their latest information regarding Pier 38.

Commissioner Lee asked Mr. Meriweather if Pier 38 is their preferred location. Mr. Meriweather replied to the affirmative. Commissioner Lee added that there are other locations at Port property. The proposed user for Pier 38 has worked long and hard for this proposal. It is difficult at this point in time to delay the action. He suggested Mr. Meriweather work with staff to determine if his operation can be placed at another location. Mr. Meriweather replied that they have looked into all kinds of things; they've worked with other people throughout the community but still prefer Pier 38 for the reason that it is right across from Delancey Street, who they have ties with and it's on the tourist lane and that their operation will create 500 permanent, good paying jobs.

Commissioner Hardeman commented that the Commission has been directed by Mayor Brown to pursue vigorously all maritime activities at the Port. In lieu of that statement, and listening to Director Bouey's comments, he concurs with Commissioner Cook's comments that he would like to see somebody who's pursuing maritime activity at the Port. He pointed out that delaying the award at this point after a tremendous amount of time and efforts have been spent would be inappropriate. Commissioner Halsted affirmed that the maritime use has to take precedence.

ACTION: Commissioner O'Neill moved approval; Commissioner Halsted seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

D. Adoption of Finding of Negative Declaration and Approval of Lease with Bedrock Concrete, Inc. for a 5-year term at Seawall Lot 344 north of Amador Street at Wharf 90-92. (Resolution No. 96-19)

Mr. Bouey stated that this lease meets all of the Port's leasing parameters. The reason it is before the Commission is, it requires an environmental certification. A negative declaration has been approved by the City Planning Department for Bedrock Batching Plant.

Commissioner Cook asked about the use of the batching plant, which poses a possibility of environmental degradation of the area and inquired from staff how that issue has been addressed and resolved. Mr. Bouey stated that it's his understanding that this lease requires the tenant to observe all the rules and regulations of not only the Port and the City but the Regional Water Board as well. Mr. Nic Dempsey responded that the Port received a negative declaration from the City Office of Environmental Review. By virtue of the lease under Sections 16.1, 16.2, 16.3 and 20.3, one cannot maintain the presence of any hazardous materials without the prior approval of the Port. The Environmental Office's clearance would have to be obtained for any hazardous materials stored outside. However, this is not included in their plan as they are a small batching operation.

Commissioner Cook asked how the lease calls for monitoring the possibility of toxic hazardous materials through the batching process. Mr. Dempsey stated it is done through the standard compliance with law which requires monitoring with the Water Board and our own environmental staff's periodic review of all tenant areas. Mr. Bouey added that when the Commission approved the reorganization a year and a half ago, the Port created the Environmental Section and part of their duties is to visit sites unannounced to ensure their compliance with the law. Commissioner Cook reiterated Mr. Bouey's comments that staff monitors at regular random basis but wants to ensure that staff does a good job monitoring because of past problems.

ACTION: Commissioner Cook moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

6. FACILITIES & OPERATIONS

7. PLANNING & DEVELOPMENT

A. Approval of Contract Amendment for the Duffey Company, for additional analysis to complete the Environmental Impact Report for the Hyde Street Fishing Harbor. (Resolution No. 96-18)

Mr. Bouey stated that in May 1995, the Commission was informed by Sharon Polledri that these changes would be forthcoming. Now that the scope of the modifications has been defined, staff is asking for the Commission's concurrence of the amendment to this contract so that it may augment the traffic study by studying additional intersections and to perform additional water quality sampling.

Commissioner O'Neill stated that this a request for 22% allocation increase. Commissioner O'Neill inquired if this was triggered by the City's request. Mr. Bouey concurred and clarified that staff try to keep additional costs down. However, with regard to some of our planning contracts, the Commission approved certain budgets but staff has negotiated contracts for lower amounts, with the knowledge they tend to require future modifications. Our fear is that negotiating a larger contract would probably still require contract amendments and a larger budget. In this and a couple of other EIR contracts, staff has taken pains to inform the Commission that

without a doubt, staff would be returning for additional monies.

ACTION: Commissioner Cook moved approval; Commissioner Halsted seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

8. ADMINISTRATION

A. Approval of 1996/97 Operating Budget (Resolution No. 96-17)

Mr. Bouey mentioned that Ben Kutnick is available to answer any specific questions by the Commission. Over the last couple of years, we staved off the Port from bankruptcy. Revenues are going up but expenses are growing at a rate faster than the Port's revenues. There are two large areas that the Port has no control over: (1) employees' compensation increased 10% this year; and (2) work orders of other departments have increased 9% this year. We had a good year last year, we're having a good year this year and we'll do all right next year, but there are structural problems between the Port and the City. He commended Mr. Kutnick for doing a great job, particularly in the visual graphs in the budget booklet.

Mr. Kutnick, Director of Administration, pointed out that most of the budget work was done by Anne Okubo. He commented that this budget includes some revisions to the Port's strategic plan, originally developed in 1990. The mission and goals do not reflect a change of direction but it makes the Port's strategic plan clear to a reader. A strategies section was added to the Strategic Plan which is used to validate the proposals developed and provides descriptions how staff plans to accomplish those goals. Mr. Kutnick requested to amend the budget by including a specific strategy that would prioritize preventive maintenance for those facilities that generate revenues and/or widely enjoyed by the public. Other items of note, the training budget remains the same ($57,750). We've centralized the resources so the training program can be managed portwide. We are in the last stages of developing a training program, which should be in place within the next 30-60 days. There was an increase of $145,000 in filming and special events. There was an increase of $265,000 in the Pier 45 seafood center. The Port recently took over the management of Roundhouse facility, which resulted in $306,000 in revenues and increased expenses of $209,000 with a net of $97,000. As Mr. Bouey pointed out, the increase of personnel cost is $1.4 million. A large part of that is salaries which have increased by 8% and fringe benefits 20%. The 5-year budget looks pretty good next year. However, in 97/98, the revenues tend to flatten out. Surpluses are down from $733,000 projected for the current year to $322,000. Revenue increases are $1.4 million and expenditures are $1.8 million, which can be absorbed once, but not on a continuing basis.

Commissioner Halsted commented that the content and presentation of the strategic plan were terrific. She requested a report on the goals at the end of the year. Mr. Bouey replied that staff can report back in October on what happened the previous year and asked Mr. Kutnick to make a note of this. A copy of the amended strategic plan will be provided to the Commission Secretary for distribution to the Commission.

Commissioner O'Neill thanked Mr. Kutnick for the detailed briefing. He inquired if this budget encourages to continue expanding our efforts for maritime. Mr. Kutnick replied that this is part of the strategic plan and we continue to review our strategy, we continue to make proposals and we continue to scan the environment with opportunities. In response to Commissioner O'Neill's inquiry regarding staff's availability to pursue cargo and maritime, Mr. Kutnick stated that we have staff available and dedicated.

Commissioner Lee inquired which area should staff look into to compensate for the expenses. Mr. Kutnick stated that the area of the biggest impact is the commercial leasing, which has grown roughly $2 to $2.5 million a year. Mr. Bouey added that we are deeply indebted to Tenant & Maritime Services for doing a yeoman's work over the last couple of years for increasing the rent on the commercial side. On the other hand, with regard to properties that are not otherwise restricted by law, our vacancy on office space is 1%. With regard to retail opportunities, we are 100% leased. Therefore, growth in this area is limited.

Mr. Bouey stated that we continue to amend the Passenger Services Act. If we could change this law, at a minimum it would draw 75 additional cruises; it will increase maritime, increase longshoreman jobs. This is the kind of strategy the Port needs to pursue to maximize its existing resources. If we can't make changes to the PSA, we will then need to look at what resources we can develop after the Waterfront Plan EIR is completed. This also raises the issue of cogeneration plant which is a facility that pays relatively big dollars for a relatively small part of land. This is an issue that this Commission will have to decide in the next six weeks or so.

Commissioner Cook stated that most of the spaces are filled up except 750,000 sq. ft. (much of the land is vacant and would generate very little revenue). If we are 100% leased up, we could increase our revenues, but where do we go after that? It's a matter of making some tough decisions on providing open space, ambiance that everyone wants, and the difficulty of trying to get any development through which will provide additional revenues. We have to be creative and push projects through. We have to be very clear to the public that the numbers are not in our favor for a healthy Port in the future. Tough decisions have to be made to ensure the Port continues to generate the extra revenue. Mr. Kutnick added that the Port needs to look to increase its revenues between $1 million and $1.5 million per year to stay in business.

Commissioner Hardeman thanked Mr. Kutnick for the briefing and added that Mr. Kutnick is very knowledgeable, he does a very good job and glad to see a person of many years of experience in his position and his staff does a good job as well.

ACTION: Commissioner Cook moved approval; Commissioner Halsted seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

B. Approval of Supplemental Appropriation for Purchase of Replacement Vehicles. (Resolution No. 96-16)

Mr. Bouey stated that the Commission has already approved this purchase. The Board of Supervisors changed the rules on how passenger vehicles would be bought, hence, the need for supplemental appropriation.

Commissioner Cook inquired about the rules in purchasing vehicles for the Port. Mr. Bouey replied that ideally the Port would turn back vehicles that were either five years old or have more than 50,000 miles on them. Commissioner Cook inquired about the process and wondered if the City Purchaser buys the vehicles for the Port and if the Port has any choice on what type of vehicle we want. Mr. Bouey replied that this is done through a bidding process and staff can designate what type of vehicle is needed. Mr. Kutnick added that on passenger vehicles, the City has certain policy guidelines that we have to follow. If we want anything larger than a compact, we have to provide a justification for the use.

Commissioner O'Neill inquired if we give preference for American manufactured vehicles. Mr. Bouey stated that to the best of his knowledge, the Purchaser only accepts bids from American manufacturers.

ACTION: Commissioner O'Neill moved approval; Commissioner Halsted seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

9. CONSENT CALENDAR

10. NEW BUSINESS / PUBLIC COMMENT

John Holt, a Port employee, spoke about the parking policy at Pier 46 Maintenance Shed. He has received a memo (a copy of which he provided to the Commission) asking the employees to pay for parking. He indicated that Emilio Cruz, before his departure, stated that parking would be negotiated between him and the unions. No negotiations have taken place and doesn't believe anyone has look into any alternative. He thinks this is something that should be negotiated.

Mr. Bouey stated that this emanates from agreement in 1980's when the Port Commission approved a transfer of property to the Redevelopment Agency. A portion of that property is where our employees park. Part of the agreement agreed to by the Commission and the Redevelopment Agency was Port employees would pay for parking. It was an issue that Emilio was working on and he asked Fred White to look into it and respond to the employees.

Since a number of the speakers came late and did not hear the Executive Director's earlier comments regarding the janitorial contract, Commissioner Cook suggested that Mr. Bouey make those comments again to make the speakers aware of the status of the contract. Mr. Bouey repeated his earlier comments.

Erica Zweig, Local 87, stated that Mr. Bouey was very responsive to the union. She confirmed that the Purchasing Department is reconsidering its decision. There are allegations against GMG for unfair labor practice for terminating a worker for engaging in

union activities. There are numerous reports from GMG workers for federal and state wage and hour violations. There are no medical benefits provided. A few of the janitors have worked in the Ferry Building for numerous years and will be terminated if this contract is awarded to GMG.

Hector Corea (speaking through an interpreter-Katy Nunez-Adler), indicated that there have been violations in his workplace (at GMG). There were wage and hour violations with the company. He alleged that he was fired because he was a union activist. He was treated very badly when he started to fight for his rights as a worker.

Harrison Groyer, Jr. stated that he has worked in the Ferry Building for 22 years. He knew GMG as he worked for them also. GMG also owes him money for work he had provided.

Gregory Jones stated he has been working at the Ferry Building for a year and if the contract is awarded to GMG, he would be out of a job.

Siu Mei Lam stated she has worked at the Ferry Building for 13 years and needs a job to pay her bills.

Gregorio Sabadlub stated that he has worked here for 15 years and also needs this job to support his family and pay his bills.

Jose Flores (speaking through an interpreter) stated that he has worked here for five years and is happy with the work he has done so far and hopes that the people whose offices he cleans recognize that too. There have been problems in the past but with the help of the union, they were taken care of.

Erica Zweig mentioned that Robert Pilon worked for the Ferry Building for four years.

Troy Batups worked for the Ferry Building for four years and hopes that everything will be taken care of.

Amanda Penate (speaking through an interpreter) stated that she worked for GMG for two years and two months. She enumerated the problems she had at GMG such as no medical benefits, was paid $6 an hour, and a good deal of the time, cleaning materials were not provided so she brought her own equipment from home. She started passing out flyers with a union organizer representative, was seen by her supervisor and was fired subsequently.

Mr. Bouey added that the City through the Charter and the Administrative Code and the Board of Supervisors, allows award of the contract to the lowest bidder. On the other hand, in certain contracts, they require prevailing wages. The City does not, however, require prevailing wages in janitorial contracts. More importantly, the City does not require basic medical coverage. He further commented that there needs to be a basic framework in which contracts should be awarded. If the lowest bidder is knocked out, our current employees' company is not the second lowest bidder, hence the current employees will be displaced. We now await for the determination of the Purchaser and the Board.

Commissioner Halsted inquired if the Port could set standards for prevailing wage and medical coverage. Mr. Bouey replied that he does not think that we could dictate those terms to the purchaser, but certainly the Board should set that policy. Ms. Julie Van Nostern, Legal Counsel, stated that the Board has exclusive jurisdiction and power over this, per the current City Charter and the Administrative Code.

Commissioner Lee asked where else can the speakers go to air their complaints. Ms. Van Nostern replied that they should go to Board of Supervisors, as they will ultimately approve the contract. The Port is not even the contracting party, it's the City through the Purchaser, on behalf of the Port. The Port does not have the ability to make the policy decision.

Commissioner Halsted reiterated that Mr. Bouey has already urged that the allegations be looked into. Mr. Bouey added that Mr. Fred White has already sent a letter to the Purchaser asking him to do an investigation to determine whether or not GMG is a responsive bidder and at the same time, we've asked the Board to continue this item until the Purchaser has completed its investigation.

Commissioner Hardeman asked for a follow-up report at the next meeting. Mr. Bouey stated that he would be happy to brief the Commission at the next meeting. Commissioner Hardeman commented that one thing that separates a union from a corporation is that a union has a heart and has compassion and a need to look at something else and he feels that one of the needs that the Commission might look at is the longevity of the employment. These employees, although we might not have direct control over them, are working in our facility; we have obligation to show concern of employees of our building. Every effort legally to encourage these employees to continue to make the same standard living and receive the same medical benefits, is in our best interest. Commissioner Cook concurred with Commissioner Hardeman.

Erica Zweig added that the Purchaser does not have a heart and he did not ask to see the employees. He took GMG's references and took that employer to be a responsible bidder.

11. EXECUTIVE SESSION

At 5:50 p.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following:

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - ***This session is closed to any non-Port representative.***

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: Dennis P. Bouey, Executive Director
AES Representative: Mark Woodruff

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER

(1) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

(a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

C. Vote in open session on whether to disclose Executive Session discussions (S.F. Admin. Code Sec. 67.14)

At 6:40 p.m., Commissioners Hardeman, Lee, Halsted, Cook, and O'Neill returned from executive session and convened in public session.

ACTION: Commissioner Halsted moved approval to not disclose any information discussed in the executive session; Commissioner O'Neill seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 6:42 p.m.

Imelda T. Quesada
Commission Secretary

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SAN FRANCISCO
PORT COMMISSION

REGULAR MEETING
4:00 P.M., TUESDAY, FEBRUARY 27, 1996
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CALIFORNIA

DOCUMENTS DEPT.
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AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - February 13, 1996

3. **EXECUTIVE**

   A. Executive Director's Report

4. **LEGISLATIVE**

5. **TENANT & MARITIME SERVICES**

   A. Approval of percentage rental adjustments for Castagnola's, Cresci Brothers', Fisherman's Grotto, Franciscan Restaurant, Guardino's, Nick Lighthouse, Sabella & LaTorre, and Tarantino's at Fisherman's Wharf (Resolution No. 96-03)

   B. Approval of Reaffirmation and First Amendment to Lease and Consent to Encumbrance with Bundox, Inc., dba the Waterfront Restaurant, at Pier 7-½ (Resolution No. 96-15)

   C. Approval of Port Park Code Covering South Beach Park, Warm Water Cove and Public Access Areas located on Port property. (Resolution No. 96-21)

6. **FACILITIES & OPERATIONS**

7. **PLANNING & DEVELOPMENT**

8. **ADMINISTRATION**

9. **CONSENT CALENDAR**

   A. Approval of travel for one Port representative to attend meetings in Washington, D.C. on March 5 - 8, 1996 of the Travel Industry Association and to meet with legislative and agency representatives regarding port projects and proposed Federal legislation, in accordance with the Port's Fiscal Year 1995-1996 Budget. (Resolution No. 96-22)

B. Approval of travel for two Port representatives to attend the National Passenger Cruise Convention at Miami, Florida, on March 11-16, in accordance with the Port's Fiscal Year 1995/96 Budget. (Resolution No. 96-23)

10. NEW BUSINESS / PUBLIC COMMENT

11. EXECUTIVE SESSION

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - ***This session is closed to any non-Port representative.***

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: Dennis P. Bouey, Executive Director
AES Representative: Mark Woodruff

Under Negotiation: ____ Price ____ Terms of Payment __✓__ Both

An executive session has been calendared to discuss real property negotiations between the Port and AES, a California corporation, regarding Cogeneration Plant. This is specifically authorized under California Government Code Section 54956.8.

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS

1) Republic Insurance Company, et.al. v. CCSF; CCSF v. Somerset Insurance Services, formally West Coast Marine Managers, Inc., et.al. U.S. District Court No. C94-2627 FMS

2) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

(a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

3) Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (3 cases).

The City Attorney is of the opinion that based on existing facts and circumstances, discussion of existing and anticipated litigation matters in open session would prejudice the legal position of the Port. An executive session is specifically authorized under California Government Code Section 54956.9(a)(b)(c).

C. Vote in open session on whether to disclose Executive Session discussions (S.F. Admin. Code Sec. 67.14)

12. ADJOURNMENT

Public comment is permitted on any matter within Port jurisdiction, and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary.

DISABILITY ACCESS

The Port Commission office is located on the third floor of the Ferry Building, Suite 3100.

The Port office is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) will be available. The closest accessible BART station is Embarcadero Station located at Market and Steuart Streets. The closest accessible MUNI Metro station is Embarcadero station located at Market and Spear Streets. Accessible MUNI lines serving the Ferry Building are the 9, 31, 32 and 71. For more information about MUNI accessible services, call 923-6142.

There is accessible parking at the Ferry Building and at the public lot in the Embarcadero median in front of the Ferry Building.

Assistive listening devices are available for use in the Port Commission Meeting.

The following services are available on request 72 hours prior to the meeting. Please contact Frank Palumbo at (415) 274-0559. Late requests will be honored if possible.

- American Sign Language Interpreters
- The use of a reader during the meeting
- A Sound Enhancement System
- Minutes of the Meeting in Alternative Formats
- Large Print of the Agenda

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at 554-6075.

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

February 21, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of percentage rental adjustments for Castagnola's, Cresci Brothers, Fisherman's Grotto, Franciscan Restaurant, Guardino's, Nick's Lighthouse, Sabella & LaTorre, and Tarantino's at Fisherman's Wharf.

DIRECTOR'S RECOMMENDATION: APPROVE PERCENTAGE RENTAL ADJUSTMENTS SET FORTH HEREIN

BACKGROUND

In 1970, the Port entered into eight 66-year leases at Fisherman's Wharf, which are summarized on Exhibit A (the "Subject Leases"). Each of the Subject Leases provide for the payment of percentage rent to the Port, and they further provide for the review and adjustment in the rate of percentage rent every 25 years during the lease term. The first such 25-year anniversary date was May 1, 1995 (the "Effective Date"). Due to ongoing discussions with the tenants for the Subject Leases, the Port and the tenants agreed to extend the time for finalizing the adjustment in the rate of percentage rent. The Port and the tenants also agreed that the final rental adjustment would be retroactive to the Effective Date.

The Subject Leases currently set forth three categories for percentage rent: (1) "Food," (2) "Alcoholic Beverages and All Other Items Sold Through the Bar," and (3) "All Other Uses." The current uses for the Subject Leases consist of full service restaurant uses, including outdoor crabstands on the sidewalk area of the leased premises, and retail uses.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

Each of the Subject Leases establishes a similar procedure for the review and adjustment of the rate of percentage rent. If the rates of percentage rent for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the adjustment date, then the Port shall adjust the rates of percentage rent for the Subject Leases accordingly. If the tenant disagrees on the amount of the adjustment, then the tenant has the right to terminate the lease without liability for future rent.

ANALYSIS BY PORT STAFF

In order to determine the rate of percentage rent for like uses in the vicinity of the leased premises for the Subject Leases, the Port hired a consultant to perform a survey and analysis of the rates of percentage rent charged for like uses in the vicinity of the leased premises and to make recommendations regarding the appropriate adjustment in the percentage rental rates for the Subject Leases. Port staff also held several discussions with the tenants for the Subject Leases and their consultants, and considered their comments regarding the appropriate adjustment.

Port staff has concluded that the current rate of percentage rent in the vicinity of the leased premises for the Subject Leases is seven percent (7.0%) for food and alcoholic beverages sold at restaurants providing full table service, and nine percent (9.0%) for retail sales. However, the Subject Leases obligate the tenants to maintain the substructure and exterior of their properties, which is normally the obligation of the landlord. Portions of the leased premises for all of the Subject Leases are located over water, and these maintenance obligations therefore include the seawall and pilings, which are significant obligations. Port staff concluded that the percentage rental rates for the Subject Leases should be lower than the rates in the vicinity of the leased premises because of these maintenance obligations.

The Port also entered into eight other leases for the following facilities whose percentage rental rates are also now subject to adjustment: Alioto's #8, Alioto Expo, Cory Galleries, Fish Alley Bar & Grill, Franceschi's, Pompei's Grotto, Sinbad's and Fog City Diner. Port staff, however, has not finalized its discussions with the tenants for these leases. Port staff will make recommendations regarding the adjustment in the percentage rental rates for these leases at a future Port Commission meeting, after discussions with the affected tenants have been completed.

STAFF RECOMMENDATION

Based upon the independent survey and analysis obtained from the Port's consultant, the input provided by the tenants and their consultants, and Port staff's own consideration and review of the data available to it, Port staff recommends that the rates of percentage rent for the Subject Leases be adjusted as follows:

Food, and Alcoholic Beverages and All Other Items Sold Through the Bar (including outdoor crabstands):	6.5% of gross receipts
All Other Uses:	8.5% of gross receipts

The recommendation of Port staff for percentage rental rates adjustments for each of the Subject Leases are indicated on the attached Exhibit B.

Prepared by: Frederick D. White
Director, Tenant and Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-03

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases and franchises granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, certain Port leases identified in Exhibit A attached to the Memorandum regarding Agenda Item 5A for the February 27, 1996 Port Commission meeting ("Memorandum") provide for adjustment in the percentage rents based on the determination that the percentage rents for like uses in San Francisco in the vicinity of the leased premises have increased or decreased as of the date of the determination; and now therefore be it

RESOLVED, that the Port Commission determines that the rates of percentage rent for full service restaurant and retails uses in San Francisco in the vicinity of the leased premises for the leases identified in Exhibit B attached to the Memorandum have increased to the rates indicated in Exhibit B; and be it further

RESOLVED, that the percentage rents for said leases shall be adjusted as indicated in Exhibit B; and be it further

RESOLVED, that the Executive Director or his designee is hereby authorized to execute all such appropriate documentation as needed to implement this Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 27, 1996.

_____
Secretary

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EXHIBIT A

FISHERMAN'S WHARF SUBJECT LEASES
CURRENT PERCENTAGE RENTAL RATES

Port Lease No.	Business Name	Current Percentage Rental Rates Food	Beverage*	Other**
L-7493	Castagnola's	5%	6.5%	6.5%
L-7494	Cresci Brother's	5%	6.5%	6.5%
L-7498	Fisherman's Grotto	5%	6.5%	6.5%
L-7496	Franciscan Restaurant	5%	6.5% Crabstand 7%	6.5%
L-7497	Guardino's	5%	6.5%	6.5%
L-7492	Nick's Lighthouse	5%	6.5%	6.5%
L-7499	Sabella & LaTorre	5%	6.5%	6.5%
L-7500	Tarantino's	5%	6.5%	6.5%

*"Alcoholic beverages and all other items sold through the bar"
**"All Other Uses."

EXHIBIT B

FISHERMAN'S WHARF SUBJECT LEASES
PROPOSED PERCENTAGE RENTAL RATES

Port Lease No.	Business Name	Effective Date	Food	Alcoholic Beverages*	Other**
L-7493	Castagnola's	5/1/95	6.5%	6.5%	8.5%
L-7494	Cresci Brother's	5/1/95	6.5%	6.5%	8.5%
L-7498	Fisherman's Grotto	5/1/95	6.5%	6.5%	8.5%
L-7496	Franciscan Restaurant	5/1/95	6.5%	6.5%	8.5%
L-7497	Guardino's	5/1/95	6.5%	6.5%	8.5%
L-7492	Nick's Lighthouse	5/1/95	6.5%	6.5%	8.5%
L-7499	Sabella & LaTorre	5/1/95	6.5%	6.5%	8.5%
L-7500	Tarantino's	5/1/95	6.5%	6.5%	8.5%

*"Alcoholic beverages and all other items sold through the bar."
**"All Other Uses" which include retail uses.

L-7492
L-7494
L-7497
L-7498
L-7499
L-7500

L-7493

L-7496

SAN FRANCISCO BAY

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

February 20, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Preston Cook
Hon. Anne Halsted
Hon. Francis J. O'Neill

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Reaffirmation and First Amendment to Lease and Consent to Encumbrance with Bundox Restaurant, Inc., dba the Waterfront Restaurant, at Pier 7½

DIRECTOR'S RECOMMENDATION: APPROVE REAFFIRMATION AND FIRST AMENDMENT TO LEASE AND CONSENT TO ENCUMBRANCE WITH BUNDOX RESTAURANT, INC. dba THE WATERFRONT RESTAURANT, AT PIER 7 ½

I. BACKGROUND

Bundox Restaurant, Inc., a California corporation ("Bundox") leases from the Port that certain building and adjacent premises located at Pier 7 ½, commonly known as the Waterfront Restaurant, under the terms of (i) that certain Bundox Restaurant Lease No. L-8561, dated June 12, 1974, (ii) that certain Lease (referred to as Lease No. L-9800), dated February 1, 1978, by and between Port and the California Inland Pilots Association, which assigned its leasehold estate to Bundox pursuant to that certain Assignment and Amendment of Lease, dated January 7, 1988, and (iii) that certain Lease (referred to as Lease No. L-11485), dated August 1, 1989 (collectively, the "Prior Lease"). The term of the Prior Lease expired on March 31, 1995, and Bundox has been on a month-to-month tenancy since that time.

On October 25, 1994, by Resolution No. 94-133, the Port Commission approved Lease No. L-11859, a new twenty-year lease with Bundox for the Waterfront Restaurant and adjacent premises ("Lease"). Lease L-11859, was approved by the Board of Supervisors on December 19, 1994, by Ordinance No. 412-94. The terms of the Lease are summarized in the memorandum to Port Commission, dated October 5, 1994, a copy of which is attached to the attached Resolution.

THIS PRINT COVERS CALENDAR ITEM NO. 5B

Section 2 of the Lease provides that the Lease shall commence and be effective on the "Commencement Date" which shall be the date on which the following, among other things, shall have occurred: (i) the procurement by Tenant of financing for Phase I of the Tenant Improvements at commercially reasonable terms; and (ii) the issuance of a Building Permit by Port allowing construction of Phase I of the Tenant Improvements. Section 2 of the Lease further provided that if the aforementioned requirements are not satisfied on or before July 30, 1995, the Lease shall not become effective and all terms and conditions stated therein shall become null and void.

Despite Bundox's efforts to satisfy the above-stated requirements, Bundox was unable to obtain financing at commercially reasonable terms, and therefore was unable to obtain a building permit from Port by July 30, 1995. Bundox believes that it is reasonable to expect that it will obtain financing at commercially reasonable terms and will obtain a Building Permit from Port by June 30, 1996. Bundox has already obtained a preliminary approval from Bank of America and the Small Business Administration for construction and permanent financing, documented with three separate deeds of trust each securing a separate loan. The total amount of financing will not exceed $3,400,000.00.

In order to revive the Lease, which became void on June 30, 1995, the Port Commission and Board of Supervisors will need to reaffirm the Lease. In addition, Bundox's lenders have requested certain amendments to the Lease as a prerequisite to the financing, and have requested the Port's consent to encumbrance, substantially in the form of the Reaffirmation and Amendment to Lease and Consent to Encumbrance attached hereto. Relevant provisions of that agreement are summarized as follows:

- **Extension of Prior Lease**. The term of the Prior Lease is extended until the Commencement Date of the Lease or until June 30, 1996, whichever is earlier.

- **Reaffirmation of Lease**. The Lease, as amended by the agreement, is reaffirmed.

- **Term of Lease.** The termination date of the Lease is amended to terminate on the twentieth (20th) anniversary of the substantial completion of the Phase I Improvements, or, if Bundox undertakes the Phase II Improvements at substantially the same time as the Phase I Improvements, then upon the substantial completion of both the Phase I and Phase II Improvements. Because Port may terminate the Lease on or after the second anniversary of the effective date if the Phase I Improvements have not been substantially completed, this amendment effectively allows a Lease term of up to a maximum of twenty-two (22) years.

- **Consent to Encumbrance.** Port consents to the encumbrance of the Lease by Bank of America and SBA under the terms and conditions set forth in the agreement attached to the attached Resolution.

- **Lease Amendments Requested by Lender.** The lender has requested certain amendments to Section 20 of the Lease with regard to Security Interests. In particular, the lender has requested the following:

  -- If the Lease terminates for any reason or is rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, the lender shall have the right to enter into a new lease on the same terms and conditions as those set forth in the Lease, provided that the lender shall have remedied all monetary defaults and shall promptly commence, and expeditiously to continue, to remedy all other defaults susceptible of being remedied.

  -- An assignment of the Lease made in connection with the lender's security documents may be made without Port's consent if such assignment is by judicial or nonjudicial foreclosure or deed in lieu of foreclosure. The lender also required that any other assignments of the Lease from the lender or to a third party bidding at a foreclosure sale be made without Port's consent because of the trustee's fiduciary obligation to accept the highest bidder. However, after such assignment, the Port retains the ability to approve the assignee. If the Port does not approve of the assignee, the assignee has 90 days to assign the Lease to an approved assignee. If the Lease has not been assigned to an approved assignee within such period, the Port may terminate the Lease. The Port also agrees to use its best efforts to pre-approve within 30 days any prospective bidders at a foreclosure sale if so requested.

  -- Port agrees not to accept a voluntary surrender of the Lease without lender's consent. Any further amendment of the Lease made without the lender's prior written consent will not be binding on the lender should foreclosure on the lease occur.

  -- Any disposition of insurance proceeds in case of loss shall be subject to the rights of lender as provided in the lender's deeds of trust during the term of the loans.

  -- Any and all eminent domain or condemnation awards or damages payable under the Lease shall be subject to the rights of lender as provided in the lender's deeds of trust during the term of the loans.

  -- Port waives the right to obtain a lien on any machinery, equipment or furniture of Bundox that may constitute a part of the fixtures located upon the Premises during the term of the loans.

Prepared by: Neil H. Sekhri, Assistant Port General Counsel

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **96-15**

WHEREAS, Charter Section 3.581 empowers the Port Commission with power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, on October 25, 1994, by Resolution No. 94-133, the Port Commission approved Lease No. L-11859 (the "Lease") with Bundox Restaurant, Inc., an existing Port tenant, and on December 19, 1994, by Ordinance No. 412-94, the Board of Supervisors approved the Lease; and

WHEREAS, The Lease became void on June 30, 1995, because Bundox failed to meet certain financing and building permit conditions; and

WHEREAS, Bundox has now received a preliminary financing approvals and now seeks Port Commission reaffirmation of Lease L-11859 between the Port and Bundox Restaurant, Inc., a California Corporation, certain amendments thereto, and a consent to encumbrance, the terms of all of which are set forth in the Memorandum of Agenda Item 5B for the Port Commission Meeting on February 27, 1996; and

WHEREAS, the Port Commission, on October 25, 1994, by Resolution No. 94-133, and the Board of Supervisors, on December 23, 1994, by Resolution No. 1035-94, adopted Final Negative Declaration #93.508E, and, found that the proposed project set forth in the Lease would have no significant impact on the environment; now, therefore, be it

RESOLVED, that the Port Commission hereby approves the Reaffirmation and First Amendment to Lease and Consent to Encumbrance between the Port and Bundox Restaurant, Inc. ("Reaffirmation"), substantially in the form attached hereto, and that the Executive Director is hereby directed to forward said Reaffirmation to the San Francisco Board of Supervisors for approval by ordinance pursuant to City Charter Section 7.402-1, and to thereafter execute the same; and be it further

RESOLVED, that the Executive Director is hereby authorized to execute such additional documents as requested by lender, including an estoppel certificate, necessary to effect the financing for the tenant improvements, in such form as approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 27, 1996

_____
Secretary

g:\wp61\nhs\waterfro.agd

Recording Requested
By and When Recorded
Return To:

For Recorder's Use Only:

REAFFIRMATION AND AMENDMENT TO LEASE AND CONSENT TO ENCUMBRANCE

This REAFFIRMATION AND AMENDMENT TO LEASE AND CONSENT TO ENCUMBRANCE ("Amendment") is entered into as of _____, 1995, by and between BUNDOX RESTAURANT INC., a California corporation, its successors and assigns ("Tenant"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), as Landlord, with reference to the following facts:

RECITALS

A. Port and Tenant entered into Lease L-11859, dated as of December 20, 1994 (the "Lease"), for the lease by Tenant of that certain real property, together with all improvements then located thereon, or to be constructed by Tenant thereon during the term of the Lease located at Pier 7, the Embarcadero at the foot of Broadway, City and County of San Francisco, State of California, all as more particularly described in the Lease. Said real property and all improvements and additions thereto and alterations thereof are hereinafter referred to as the "Premises."

B. Port leased to Tenant a portion of the Premises in accordance with the terms of (i) that certain Bundox Restaurant Lease, dated June 12, 1974, by and between Port and Tenant, (ii) that certain Lease (referred to as Lease No. L-9800), dated February 1, 1978, by and between Port and the California Inland Pilots Association, which assigned its leasehold estate to Tenant pursuant to that certain Assignment and Amendment of Lease, dated January 7, 1988, and (iii) that certain Lease (referred to as Lease No. L-11485), dated August 1, 1989, by and between Port and Tenant (all of the foregoing leases shall be referred to collectively as the "Prior Lease" and the premises leased thereunder shall be

referred to collectively as the "Prior Premises").

C. Section 2 of the Lease provides that the Lease shall commence and be effective on the "Commencement Date" which shall be the date on which the following, among other things, shall have occurred: (i) the procurement by Tenant of financing for Phase I of the Tenant Improvements at commercially reasonable terms; and (ii) the issuance of a Building Permit by Port allowing construction of Phase I of the Tenant Improvements. Section 2 of the Lease further provided that if the aforementioned requirements are not satisfied on or before July 30, 1995, the Lease shall not become effective and all terms and conditions stated therein shall become null and void.

D. Despite Tenant's best efforts to satisfy the above-stated requirements, Tenant has been unable to obtain financing at commercially reasonable terms, and therefore Tenant was unable to obtain a building permit from Port by July 30, 1995. Tenant and Port believe that it is reasonable to expect Tenant to obtain financing at commercially reasonable terms by June 30, 1996.

E. The original term of the Prior Lease expired on or before November 1, 1994. However, Tenant remains in possession of the Prior Premises under the Prior Lease, and both parties desire to extend the term of the Prior Lease until the Commencement Date of the Lease, or until Section 2 of the Lease renders the Lease null and void, which ever is earlier.

F. Tenant and Port also desire to amend Section 2 of the Lease to extend the date by which Tenant must obtain financing for the Phase I Tenant Improvements to June 30, 1996.

G. Tenant has applied for financing from Bank of America Community Development Bank ("BofA") and the U.S. Small Business Administration ("SBA") for construction of the Tenant Improvements under the Lease, to be secured by Tenant's leasehold interest. As a condition to the financing, BofA and the SBA have requested the Port to consent to the encumbrance of the Lease and to amend the Lease to provide certain protections to the Lenders.

H. If not defined herein, all capitalized terms in this Amendment shall have the same meaning as in the Lease.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Extension of Prior Lease. The Prior Lease is hereby amended to extend the term of the Prior Lease to the Commencement Date of the Lease or until Section 2 of the Lease renders the Lease null and void, whichever is earlier.

2. Reaffirmation of Lease. Port and Tenant hereby reaffirm and review all of the terms and conditions of the Lease, as amended hereby.

3. Superseding of Prior Lease. The last sentence of Section 1.1, "Prior Lease," of the Lease is hereby amended to read as follows:

> Port and Tenant each acknowledge and agree that this Lease shall supersede in its entirety the Prior Lease effective as of the "Commencement Date," as hereinafter defined.

4. Change in Date By Which Conditions Precedent to Lease Effectiveness Must Occur. Section 2 of the Lease is hereby amended to read as follows:

> 2. **Term of Lease.** This Lease shall commence and be effective on the "Commencement Date" which shall be the date upon which all of the following have occurred: (i) the issuance of a Conditional Use Permit by the Planning Department of the City in form and substance satisfactory to Port and Tenant in each of their sole discretion allowing use of the Premises as contemplated herein, (ii) the issuance of a permit by the Bay Conservation and Development Commission in form and in substance satisfactory to Port and Tenant in each of their sole discretion allowing construction of the Tenant Improvements and use of the restaurant and banquet facility contemplated herein; (iii) the adoption of an ordinance of the San Francisco Board of Supervisors approving this Lease; and (iv) the procurement by Tenant of financing for Phase I of the Tenant Improvements at commercially reasonable terms, as evidenced by a commitment letter or loan authorization issued by a qualified lender. If the aforementioned requirements are not met on or before June 30, 1996, this Lease shall not become effective and all terms and conditions stated herein shall be null and void. Tenant shall use its best efforts to satisfy all of the above-stated conditions on or before June 30, 1996. The terms of this Lease shall terminate on the twentieth (20th) anniversary of the Substantial Completion of the Phase I Improvements, or, if Tenant undertakes the Phase II Improvements at substantially the same time

as the Phase I Improvements, then upon the substantial completion of both the Phase I and Phase II Improvements (all as defined in Section 33 hereof) ("Termination Date"), unless sooner terminated as provided for in this Lease (the "Term"). Port and Tenant shall confirm the Commencement Date and Termination Date in writing but failure to do so shall not affect the validity hereof. As used herein, "Anniversary Date" shall mean the first anniversary of the Commencement Date and each anniversary of such date thereafter; provided, however, that if the Commencement Date is other than the first day of a month, then the first Anniversary Date shall be the first day of the thirteenth (13th) month following the Commencement Date.

5. Consent to Encumbrance. Port and Tenant affirm for the benefit of BofA and SBA that (i) BofA and SBA are approved "Lenders" for purposes of Section 20 of the Lease regarding Security Interests, as amended hereby, (ii) Port and Tenant's obligations thereunder shall be for the benefit of BofA and SBA, and their respective successors and assigns and (iii) BofA and SBA and their respective successors and assigns each shall have all of the rights of the "Lender" provided thereunder. Port and its respective successors and assigns consent to the following encumbrance of the Lease by BofA and SBA:

(a) Tenant's encumbrance of Tenant's Leasehold by a Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing ("BofA Deed of Trust I") in favor of BofA to secure a note in the principal sum of One Million Two Hundred Seventy-Four Thousand Two Hundred and Fifty Dollars ($1,274,250) made by Tenant, and other obligations set forth in BofA Deed of Trust I which will be recorded in the official Records of San Francisco County;

(b) Tenant's encumbrance of Tenant's Leasehold by a Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing ("BofA Deed of Trust II") in favor of BofA to secure a note in the principal sum of Nine Hundred Sixty-Seven Thousand Dollars, ($967,000), made by Tenant, and other obligations set forth in BofA Deed of Trust II which will be recorded in the Official Records of San Francisco County;

(c) Tenant's encumbrance of Tenant's Leasehold by a Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filings ("SBA Deed of Trust") and a Collateral Assignment of Tenant's Interest in Lease ("Collateral Assignment") (the "SBA Security Documents") in favor of the SBA to secure a note made by Tenant in the maximum

principal amount of One Million Dollars ($1,000,000) (the "SBA Note") and other obligations set forth in the SBA Deed of Trust which will be recorded in the Official Records of San Francisco provided, however, that such encumbrance may be recorded prior to funding thereof but it shall only be permitted to remain of record to the extent that on funding, it replaces BofA Deed of Trust II in its entirety;

(d) Tenant's encumbrance of Tenant's Leasehold by a Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing ("BofA Deed of Trust III") in favor of BofA to secure a note in the principal sum of One Hundred Thousand Seventy-four Dollars, ($1,074,000) made by Tenant, and other obligations set forth in BofA Deed of Trust III which will be recorded in the Official Records San Francisco;

(e) The terms and purposes of the notes, and any extensions or renewals thereof, and other obligations secured by BofA Deed of Trust I, BofA Deed of Trust II, and BofA Deed of Trust III (collectively, the "BofA Deeds of Trust");

(f) the terms and purposes of the SBA Note and any extensions or renewals of the SBA Note.

6. Insurance. Section 16.3(c) of the Lease is hereby amended to read in its entirety as follows:

> (c) Third, except as otherwise provided in Section 20(s) to compensate Tenant or any mortgagee of Tenant, as their respective interests may appear, for the remaining unamortized Certified Construction Costs for the Tenant Improvements, which amount shall be amortized on a straight line basis over a seven year period for each phase of the Tenant Improvements and shall in no event exceed Two Million Dollars ($2,000,000.00) at commencement of the amortization period for Phase One less any Improvement Credits taken by Tenant pursuant to Section 33, or One Million Four Hundred Thousand Dollars ($1,400,000.00) at commencement of the amortization period for Phase Two, less any Improvement Credits taken by Tenant pursuant to Section 33.

7. Assignment and Subletting. New Sections 19.10 and 19.11 are hereby added to the Lease to read as follows:

19.10 Assignments by Lenders. In the event of an assignment of this Lease by judicial or non-judicial foreclosure or deed-in-lieu of foreclosure ("Assignment by Foreclosure"), the assignee ("Foreclosure Assignee") shall be subject to all of the terms and conditions of this Lease, including payment of Rent. Notwithstanding the foregoing, and further subject to the provisions of Section 20(0) hereof, any Foreclosure Assignee shall immediately (but in no case more than thirty (30) days after the effective date of the Assignment by Foreclosure) submit to Port the notice and information required in Section 19.3 hereof and failure to provide such information shall render this Lease voidable at the option of Port. Port shall have forty-five (45) days after receipt of such Section 19.3 notice and information to give or deny its written consent to the Assignment by Foreclosure in accordance with the standards set forth in Section 19.4 hereof. In the event Port withholds its consent to such Assignment by Foreclosure, the Foreclosure Assignee shall have 90 (90) days after Port's notice to obtain Port's consent to a subsequent assignee and to assign this Lease to such approved person or entity. In the event that Port has not consented to the Assignment by Foreclosure or any subsequent assignment from the Foreclosure Assignee within one hundred sixty-five days (165) after the effective date of the Assignment by Foreclosure, this Lease shall be voidable at the option of the Port. Failure of Port to respond within the time periods set forth herein shall be deemed consent as to each particular request only.

19.11 Pre-Approval by Port. In the event any legitimate potential Foreclosure Assignee requests Port's consent to the assignment prior to the effective date of the assignment, Port shall accept and consider such requests that are made in conformance with the application requirements of Section 19.3 hereof. Port shall use its best efforts to respond with its approval or disapproval of such applications within thirty (30) days of receipt by Port in accordance with the standards set forth herein under Section 19.4. If Port fails to respond within such 30-day period and if Port fails to respond within ten (10) business days after written notice by a potential Foreclosure Assignee of such failure to respond, then Port shall be deemed to have consented thereto. Any such preapproval granted by Port shall be deemed consent to such assignment in the event that such approved potential assignee succeeds to the lender's interest under an Assignment by Foreclosure.

8. Security Interests. Section 20 of the Lease is hereby amended to

include the addition of the following provisions for the sole benefit of BofA and SBA:

(o) **Assignment of the Lease.** An assignment of the Lease made in connection with the BofA and SBA Security Documents may be made without Port's consent if such assignment is made to BofA or SBA or an affiliate of BofA or SBA by any of the following:

(i) by judicial or nonjudicial foreclosure or deed in lieu of foreclosure under the SBA Deed of Trust and the BofA Deeds of Trust; or

(ii) by exercise of rights under the Collateral Assignment including assignment in lieu of foreclosure.

Any other assignment of the Lease made by SBA or BofA following an assignment by a means described in (i) or (ii) above, or to the successful purchaser at a foreclosure sale may be had without Port's prior written consent, but shall be further subject to the provisions of Sections 19.10 and 19.11 hereof.

(p) **New Lease.** If the Lease shall terminate for any reason or be rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, SBA or BofA as provided below shall have the right to enter into a lease ("New Lease") of the Premises, exercisable by written notice to Port within sixty (60) days after the effective date of such termination. The term of such New Lease shall begin on the date the Lease terminates and shall continue for the remainder of the existing Lease term. Such New Lease shall otherwise contain the same terms and conditions as those set forth in the Lease, as amended by this Lease Amendment, except for requirements which are no longer applicable or have already been performed, provided that SBA shall have remedied all defaults on the part of Tenant which are susceptible of being remedied by the payment of money, and provided further that such New Lease shall require the tenant thereunder promptly to commence, and expeditiously to continue, to remedy all other defaults on the part of Tenant to the extent susceptible of being remedied. It is the intention of the parties to this Lease Amendment that such New Lease shall have the same priority as the Lease, relative to other rights or interests to or in the fee estate in the

Lease Property, and Port covenants to discharge or cause to be subordinated to such New Lease any lien or encumbrance which is subject to the Lease. The provisions of this Section shall survive the termination of the Lease and shall continue in full force and effect to the same extent as if this Section were a separate and independent contract among Port, Tenant and SBA and BofA. From the date on which SBA or BofA shall serve upon Port notice of the exercise of its right to a New Lease, SBA or BofA may use and enjoy the Leased Property without interference by Port. Notwithstanding the foregoing, if the indebtedness secured by BofA Deed of Trust I is outstanding as of the date of termination of the Lease, SBA may enter into the New Lease in accordance with the provisions of this subparagraph (o) only if as a condition precedent, SBA has agreed in writing with BofA to execute and record a deed of trust that meets the following requirements:

(1) In form and substance, the deed of trust must be reasonably satisfactory to BofA, encumber SBA's leasehold interest under the New Lease, and fully secure any existing indebtedness secured by BofA Deed of Trust I.

(2) The deed of trust must have the same priority relative to any other rights or interests in the fee estate in the Premises which existed as of the date of recordation of BofA Deed of Trust I as BofA Deed of Trust I bore to those other rights and interests, and must be senior to any rights, interests, liens or encumbrances which arise subsequent to the recordation of BofA Deed of Trust I.

If SBA cannot or does not agree to execute and record a deed of trust meeting the foregoing requirements, then all rights granted to SBA under this subparagraph (p) shall be fully exercisable by BofA and its successors and assigns.

(q) **Rights of SBA and BofA Regarding Merger of Lease.** Port agrees that the exercise of its rights under the Lease in case of an event of default shall not, without SBA's and BofA's prior written consent, result in the merger of Port's estate with Tenant's estate under the Lease.

(r) **No Surrender or Amendment.** As long as the indebtedness under the BofA Deeds of Trust or SBA Security Documents

remains outstanding, Tenant shall not voluntarily surrender, nor shall Port accept a voluntary surrender of the Lease or the Leasehold without BofA's and SBA's prior written consent. Any amendment or modification to this Lease, or any waiver of any terms of the Lease, made without BofA's or SBA's written consent, shall not be binding on BofA or SBA or any purchaser acquiring the Lease from BofA or SBA, or pursuant to the exercise of BofA's or SBA's rights under the Deeds of Trust or the SBA Security Documents. Notwithstanding the foregoing, if pursuant to Section 20(o), there is either an assignment of the Lease by BofA or SBA or a purchase of the Lease, or if there is an assignment of a New Lease by BofA or SBA, Port will consent to the purchase money encumbrance of the assignee's leasehold interest on terms substantially similar to the terms of the Lease as amended.

(s) **Insurance.** Notwithstanding any Lease provision to the contrary, including without limitation, Section 16.3(c) Tenant shall carry fire and extended coverage insurance policies covering the building or buildings constructed on the Leased Premises with a loss payable clause in favor of BofA and SBA, as their respective interests may appear, and any disposition of insurance proceeds in case of loss shall be subject to the rights of BofA as provided in the BofA Deed of Trust I to the extent that any indebtedness secured thereby is outstanding, and thereafter shall be subject to the rights of SBA as provided in the SBA Deed of Trust to the extent that any indebtedness secured thereby is outstanding. Tenant shall provide evidence of insurance forms to BofA and SBA.

(t) **Port's Waiver of Lien Rights.** Port waives the right to obtain, for any liability of Tenant that arises, accrues or is the subject of legal action while any of the BofA Deeds of Trust or the SBA Deed of Trust is in existence, a lien on any machinery, equipment or furniture of Tenant that may constitute a part of the fixtures located upon the Leased Premises.

(u) **Curable Defaults.** So long as any indebtedness secured by the BofA Deeds of Trust or the SBA Deed of Trust is outstanding, the Port may not terminate the Lease because of any default or breach thereunder on the part of Tenant if either BofA or SBA:

(1) Within 30 days after service of written notice on

BofA and SBA by the Port of Port's intention so to terminate, notifies the Port in writing whether it intends to cure such default or cause such default to be cured, and whether it intends to commence proceedings to acquire the leasehold by foreclosure or otherwise; and

(2) Within 30 days after delivery by BofA or SBA of the notice required under subpart (1) above, cures the default or breach if it can be cured by the payment or expenditure of money provided to be paid under the terms of the Lease, or if the default or breach is not so curable, within 60 days after delivery by BofA or SBA of the notice required under subpart (1) above, commences, or causes the trustee under any of the BofA Deeds of Trust or the SBA Deed of Trust to commence, and thereafter to pursue diligently to completion, steps and proceedings to foreclose on the Leasehold covered by any said Deed of Trust; and

(3) Thereafter keeps and performs all of the covenants and conditions of the Lease requiring the payment or expenditure of money by the Lessee until such time as the Leasehold is sold upon foreclosure pursuant to any such Deed of Trust, or is released or reconveyed thereunder, or is transferred upon judicial foreclosure or by an assignment in lieu of foreclosure.

(v) **Personal Liability.** BofA or SBA shall not become personally liable for the performance or observance of any covenants or conditions to be performed or observed by Tenant unless and until BofA or SBA becomes the owner of the Leasehold whether by the exercise of a remedy provided in the BofA Deeds of Trust or SBA Security Documents, assignment in lieu of foreclosure, or otherwise, or enters into a New Lease with Port pursuant to Section 20(p) above. After becoming owner of the Leasehold or entering into such New Lease, BofA or SBA shall be personally liable for the performance and observance of such covenants and conditions only for so long as BofA or SBA owns the Leasehold or is the Tenant under a New Lease.

8. Tobacco Products Ban. The following paragraph is added as Section 27.4 to the Lease:

Tobacco Products Advertising Ban. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is

allowed on any real property owned by or under the control of the City, including the property which is the subject to this Lease. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

9. General Provisions.

9.1 **Further Assurances.** Port and Tenant each agree to execute any and all documents and agreements reasonably requested by the other party to further evidence or effectuate this Amendment.

9.2 **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

9.3 **Reaffirmation.** Except as amended hereby, all of the terms and conditions of the Prior Lease and the Lease shall remain in full force and effect and unchanged.

9.4. **Conflicts.** In case of any conflict between any term or provision of this Amendment and the Lease, the terms or provision of this Amendment shall govern.

9.5 **Effect of This Lease Amendment.** To the extent that this Lease Amendment gives additional rights to SBA and BofA, the Lease is amended and modified for the benefit of SBA and BofA only.

9.6 **Construction.** In this Amendment, the singular number includes the plural whenever the context so requires.

IN WITNESS WHEREOF, this Amendment has been executed at San Francisco, California as of the date first set forth above.

PORT	TENANT
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,	BUNDOX RESTAURANT, INC., a California Corporation

operating by and through the SAN FRANCISCO PORT COMMISSION

By: _____
FREDERICK D. WHITE
Director, Tenant and Maritime Services

By: _____
AL FALCHI
President

APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

By:_____
NEIL H. SEKHRI
Deputy City Attorney

Port Commission Resolution No._____

Board of Supervisors Ordinance No. _____

Acknowledged and Agreed

"BofA"
BANK OF AMERICA

_____

By:_____
Title:_____

"SBA"
SMALL BUSINESS ADMINISTRATION

_____

By:_____
Title:_____

G:\NHS\WATERFRO\LSE-AMEN.VI6

PORT OF SAN FRANCISCO **MEMORANDUM**

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

February 20, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Preston Cook
Hon. Anne Halsted
Hon. Francis J. O'Neill

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Port Park Code Covering South Beach Park, Warm Water Cove and Public Access Areas Located on Port Property

DIRECTOR'S RECOMMENDATION: APPROVE PARK CODE

On December 2, 1995, the Redevelopment Agency opened the first phase of the Park in the Rincon Point/South Beach Project Area which is on land the Agency leases from the Port of San Francisco for a term of up to 55 years. The Agency has important interests in regulating activities in the Park to protect visitors from safety hazards, prevent damage to the property and facilitate special event coordination. As a result, the Agency has determined that there is a need to impose reasonable time, place and manner restrictions upon activities of the general public in South Beach Park.

Because the Redevelopment Agency does not possess police powers to enforce such restrictions, the Agency has requested the Port to adopt a Port Park Code ("Park Code"), based on relevant provisions of the City's Park Code, and extend the provisions of the Port Park Code over the South Beach Park area. The Agency has also requested the Port to authorize the Agency to issue permits and adopt rules governing South Beach Park for the duration of the Agency's lease with the Port for South Beach Park.

Under the Burton Act and Charter Section 3.581, the Port has the complete authority to manage, regulate and control the harbor of San Francisco and to do all things it deems necessary in connection with the use, conduct, operation, management, maintenance, regulation, improvement and control of the Port property. For example, pursuant to this authority, the Port has adopted its own Harbor Traffic Code. Although the Redevelopment Agency has requested the Port to adopt a Park Code, Port staff believe that it is also in the Port's best interests to set forth a code regulating activities on Port property open to public access. Consequently, Port staff has prepared a Park Code for your consideration, a copy of which is attached to the attached Resolution.

THIS PRINT COVERS CALENDAR ITEM NO. 5C

The proposed Park Code has been adopted directly from the City's Park Code which covers City property under the jurisdiction of the Department of Parks and Recreation. The proposed Park Code will cover South Beach Park, Warm Water Cove, and other areas of Port property designated for public access, including Pier 7, Ferry Plaza, the Port Embarcadero Promenade, Pier 43, Pier 43 1/2, Fisherman's Wharf Lagoon, and Pier 47A. The Park Code addresses the following items: (1) regulations governing conduct; (2) prohibitions on disorderly conduct; (3) regulations regarding animals; (4) regulations regarding traffic; (5) procedures regarding permits for activities conducted on park property; and (6) penalties, including misdemeanor and infraction penalties, for violations of the Park Code. The Park Code authorizes peace officers and delegated Port employees to carry out provisions of the Park Code.

In addition, for so long as the Agency retains control of South Beach Park under its lease with the Port, the Park Code delegates authority to the governing body of the Redevelopment Agency to set rules and issue permits for South Beach Park, and to designate persons who shall perform all other functions for South Beach Park which would be performed by the Port's Executive Director for any other Port property covered by the Park Code. The Redevelopment Agency has submitted to the Port their proposed rules for South Beach Park for approval. The Agency has agreed not to adopt any new rules or changes to existing rules without agreement thereto by the Port Commission.

Article 6 of the Park Code provides that the Port Commission will adopt by resolution procedures for the filing and processing of permit applications. Port staff is developing such procedures and will request the Port Commission to approve such procedures at a future meeting.

Because the Park Code provides for misdemeanor penalties and fines for infractions, authorizing legislation by the Board of Supervisors will be necessary to implement the Park Code.

Prepared by: Neil H. Sekhri, Assistant Port General Counsel

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-21

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, the Port Commission desires to adopt a Park Code in substantially the form attached hereto, setting forth rules and regulations governing conduct within public access areas of Port property: and

WHEREAS, the Redevelopment Agency has requested that the Port Park Code be extended to cover South Beach Park, and that the Port Commission authorize the Agency to adopt rules and issue permits for South Beach Park for the term of its lease therefor; and

WHEREAS, Board of Supervisors approval is necessary to authorize enforcement of the Park Code pursuant to the City's police powers; now, therefore, be it

RESOLVED, that the Port Commission hereby approves the Park Code in substantially the form attached hereto; and be it further

RESOLVED, that pursuant to Article 7 of the attached Park Code, so long as the San Francisco Redevelopment Agency retains control of South Beach Park under its lease with the Port Commission, the governing body of the Redevelopment Agency is hereby authorized to set rules for South Beach Park (subject to the approval by the Port's Executive Director), and to issue permits therefor, and to designate persons who shall perform all other functions for South Beach Park which would be performed by the Port's Executive Director for any other Port property covered by the Park Code; and be it further

RESOLVED, That the staff of the San Francisco Port Commission is hereby directed to take all steps necessary and proper to carry out this resolution, provided however, that implementation of this resolution shall be conditioned upon passage of complimentary legislation by the Board of Supervisors.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 27, 1996.

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Secretary

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SAN FRANCISCO PORT COMMISSION
PARK CODE

Article 1. Definitions.

Sec. 1 "Park" Defined.
Sec. 2 "Commission" Defined.
Sec. 3 "Executive Director" Defined.
Sec. 4 "Person" Defined.
Sec. 5 "Sign" Defined.
Sec. 6 "Vehicle" Defined.
Sec. 7 "Park Patrol" Defined.

1. 1. **"Park" Defined**. When used in this code, the word "park" shall mean and include those certain grounds, roadways, avenues, squares, recreation facilities, and other property identified in Appendix A hereto, which is under the jurisdiction of the San Francisco Port Commission.

1. 2. **"Commission" Defined**. When used in this Code, the word "Commission" refers to the San Francisco Port Commission of the City and County of San Francisco.

1. 3. **"Executive Director" Defined**. When used in this Code, the words "Executive Director" refer to the Executive Director appointed by the Commission pursuant to Charter Section 3.581 or to a person designated by the Executive Director to act on his or her behalf.

1. 4. **"Person" Defined**. The word "person" when used in this Code shall mean and include any person, association, partnership, firm or corporation.

1. 5. **"Sign" Defined**. The word "sign" when used in this Code shall mean any literal, pictorial or symbolic representation, including, but not limited to, a written, printed, photocopied or painted message on any paper, cardboard, wood, metal, cloth, or other flat surface.

1. 6. **"Vehicle" Defined**. When used in this Code, the word "vehicle" shall mean any device, in, upon, or by which a person or property is or may be propelled, moved or drawn upon a highway, excepting a device moved by human power or used exclusively upon stationary rails or tracks, and shall include, but not be limited to, the following: automobile, truck, motorcycle, motor-driven cycle, animal-drawn carriage, buckboard, cart, and minibike or bicycle when operated under engine power.

1. 7. **"Park Patrol" Defined.** When used in this Code, the words "Park Patrol" refer to persons hired as employees or contractors of the Commission to patrol the areas under the jurisdiction of the Commission.

Article 2. Regulations

Sec. 2.1 Rules of Port Commission to Be Obeyed.
Sec. 2.2 Signs to Be Obeyed.
Sec. 2.3 Public May Be Excluded.
Sec. 2.4 Athletic Activities Prohibited in Certain Areas.
Sec. 2.5 Restrictions on Posting of Signs
Sec. 2.6 Personal Services.
Sec. 2.7 Airplanes, Helicopters, Hot Air Balloons, Etc., Prohibited.
Sec. 2.8 Peddling and Vending Merchandise or Printed Material.
Sec. 2.9 Camping Prohibited.
Sec. 2.10 Sleeping Prohibited During Certain Hours.
Sec. 2.11 Performance of Labor.
Sec. 2.12 Building Materials.
Sec. 2.13 Ground to Be Restored to Condition.
Sec. 2.14 Warning Signals at Danger Points.

2.1. **Rules of Port Commission to Be Obeyed**. No person shall willfully disobey or violate any of the rules or regulations of the Commission governing the use and enjoyment by the public of any park or of any building, structure, equipment, apparatus or appliance in any park, which rules or regulations, at the time, are posted in some conspicuous place in that area of the park or in or near the building, structure, equipment, apparatus or appliance to which the rule or regulation applies.

2.2. **Signs to Be Obeyed**. No person shall willfully disobey the notices, prohibitions or directions on any sign posted by the Commission.

2.3 **Public May be Excluded**. In case of an emergency, or when in the judgment of the Commission or the Executive Director the public interest demands it, any portion of any park or park building therein may be closed to the public until such park area or building is reopened to the public by the Commission or the Executive Director: provide, however, that nothing in this Section shall authorize the Executive Director to close any portion of any park building because of activities, existing or anticipated, engaged in for the purpose of expressing ideas or causes, which activities are protected by the First Amendment to the United States Constitution.

2.4 **Athletic Activities Prohibited in Certain Areas**. Where a sign is posted, no person shall participate in any athletic activity, including, but not limited to running, jogging, volleyball, baseball, soccer, football, roller skating, bicycle riding, skateboarding, or frisbee. The prohibition contained in this Section applies to running or jogging only when the person running or jogging does not remain on pedestrian paths.

2.5 **Restrictions on Posting of Signs**.

(A) No person shall post or affix to any tree, shrub, plant, fence, building, monument,

wall, post, vehicle or other physical object in any park any written or printed material, including, but not limited to, signs, notices, handbills, circulars and pamphlets.

(B) Notwithstanding Section 2.5, signs may be posted in the following circumstances:

(1) Any person who has scheduled an event in any park pursuant to a permit from the Commission may erect or post signs on the day that the event is scheduled to occur giving directions to such event, provided that such person receive prior approval from the Commission.

(2) Any person leasing the park from the Commission may post signs on or about the premises leased informing the public of the event scheduled to occur, provided that the locations selected for such posting have been designated by the Executive Director as appropriate for such use, which designated location or locations for such facility shall be applicable to all lessees of such facility, and provided further, that such signs not be posted earlier than one week before the event is scheduled to occur nor later than one week after the event is over;

(3) Persons and organizations maintaining and operating recreational facilities on park property on a daily basis may post signs which identify the facilities which provide information pertaining to recreational activities, or which inform the public of events sponsored by such persons and organizations or of regulations governing such facilities, provided (A) that such signs are posted only on the facilities so operated and maintained, whether inside or outside and (B) that if they are posted outside, the organization receive prior approval from the Executive Director.

(4) The Commission or its designee may post signs in any park or in any facility in any park governing the public use of park property or informing the public of events sponsored by the Commission.

(C) When a person or organization is required to obtain the prior approval of the Executive Director in order to post a sign in a park, the Commission may withhold such approval only if it finds that the location of such sign or signs would harm public or private property, or inconvenience or endanger the public, or unduly cover or block park facilities.

(D) No sign which is posted pursuant to this Section shall be affixed to any tree, shrub or plant.

2.6. **Personal Services**. No person shall use any of the facilities or areas of any park for the purpose of providing tennis, golf, sailing, boating, baseball, jogging, horseback riding or other athletic instruction for compensation without first having obtained a permit, concession, license or lease from the Commission.

2.7 **Airplanes, Helicopters, Hot Air Balloons, Etc., Prohibited**. No person shall launch nor land any airplane, helicopter, parachute, hang glider, hot air balloon, nor any other machine or apparatus of aviation in any park, nor shall any person bring into any park any balloon with a diameter of more than six feet or a gas capacity of more than 115 cubic feet, without permission of the Executive Director. This Section shall not be applicable to a helicopter being used to transport persons or supplies because of an emergency situation.

2.8 **Peddling and Vending Merchandise or Printed Material**. No person shall bring, or cause to be brought, for the purposes of sale or barter, or have for sale, or sell or

exchange, or offer for sale or exchange any goods, wares, or merchandise in any park without first having obtained a permit, concession, license or lease from the Commission.

2.9 **Camping Prohibited**. No person shall construct or maintain any building, structure, tent or any other thing in any park that may be used for housing accommodations or camping, except by permission from the Executive Director.

2.10 **Sleeping Prohibited During Certain Hours**. No person shall remain in any park for the purpose of sleeping between the hours of 10:00 p.m. and 6:00 a.m., except that special permission may be granted by the Executive Director to person providing security services between said hours in any park or for other unusual events.

2.11 **Performance of Labor**. No person, other than duly authorized personnel, shall perform any labor, on or upon any park, including, but not limited to, taking up or replacing soil, turf, ground, pavement, structure, tree, shrub, plant, grass, flower and the like, without permission of the Executive Director.

2.12 **Building Materials**. No person shall place, pile, deposit or leave any building material in any park without first having obtained a permit to do so from the Commission.

2.13 **Ground to Be Restored to Condition**. Where work has been done in any park pursuant to a permit, the permittee shall repair, reconstruct, and put the ground in as good condition in all respects when the work shall have been completed or terminated or such permit shall have expired, as said ground was in when said permit was granted or said work commenced; the condition of the ground, site or place in the park where the work has been done pursuant to any permit shall be made satisfactory to the Executive Director, and on the completion of said work the permittee shall forthwith remove all buildings, structures, machinery or equipment used in connection with said work from the park.

2.14 **Warning Signals at Danger Points**. Every person who does any act in any park, whether the act is done by that person or by an agent or at the person's direction, and whether the person is acting as principal, contractor, or employer, and by that act makes the park or any portion of it dangerous must erect and, so long as the danger continues, maintain around the portion of the park so made dangerous a good and substantial barrier, and shall maintain at appropriate places along such barrier, during every night, from sunset until daylight, flashing lights, flares or some other suitable light sufficient to give warning of said danger.

Article 3. Disorderly Conduct

Sec. 3.1 Disorderly Conduct.
Sec. 3.2 Swimming Restrictions.
Sec. 3.3 Polluting Waters Prohibited.
Sec. 3.4 Littering and Dumping of Waste Matter Prohibited.

Sec. 3.5 Malicious Destruction of Property.
Sec. 3.6 Removal of Trees, Wood, Etc.
Sec. 3.7 Penalties for Violation of Section 119.
Sec. 3.8 Interference with Port Commission and Park Employees.
Sec. 3.9 Alcoholic Beverages.
Sec. 3.10 Persons Intoxicated by Alcohol or Drugs May Be Excluded.
Sec. 3.11 Persons May Be Excluded Under Certain Circumstances.
Sec. 3.12 Refusal to Obey Lawful Order.
Sec. 3.13 Fighting, Disturbing Peace, Offensive Words.
Sec. 3.14 Intoxication by Alcohol or Drugs.
Sec. 3.15 Minors, Parents and Guardians Of.

3.1. **Disorderly Conduct**. No person shall, in any park, without permission of the Executive Director:

(A) Throw or propel objects of a potentially dangerous nature, including, but not limited to, stones, bottles, glass, cans or crockery;

(B) Fire or carry firearms of any size or description, or possess any instrument, appliance or substance designed, made or adopted for use primarily as a weapon, including, but not limited to, slingshots, clubs, swords, razors, billies, explosives, dirk knives, bowie knives or similar knives, except that this subsection shall not apply to a police or other peace officer;

(C) Fire or carry any firecracker, rocket, torpedo or other fireworks of any description (this subsection shall not be deemed to contradict any provisions contained in Chapter VIII (Police Code) of the San Francisco Municipal Code);

(D) Carry or use a model airplane which is powered by liquid fuel or designed to be used with such fuel;

(E) Make, kindle, maintain or in any way use a fire except at places provided, designated and maintained by the Commission for such use;

(F) Climb or lie upon any tree, shrub, monument, wall, fence, shelter, fountain, statute, building, construction or structure;

(G) Emit, eject, or cause to be deposited any excreta of the human body, except in proper receptacles designated for such purposes;

(H) Expose his or her genitals, pubic hair, buttocks, perineum, anal region or public hair region or any portion of the female breast at or below the areola thereof, except that this section shall not apply to children under the age of five years;

(I) Enter a restroom or toilet set apart for use of the opposite sex, except children under the age of five years accompanied by a parent or guardian and duly authorized personnel for the purpose of inspection, maintenance or repair;

(J) Gain or attempt admittance to facilities in any park where a charge is made, without paying that charge;

(K) Play any percussion instrument, including drums, at any time or location prohibited by resolution of the Commission when a sign has been posted in the area affected to give notice of this prohibition; provided that such resolution does not unreasonably curtail the playing of such instruments in any area of the city.

3.2 **Swimming Restrictions**. No person shall enter, wade or swim in the waters of any lake, pond, pool, tank, fountain or reservoir in any park except where permitted by regulation or special permission of the Executive Director.

3.3 **Polluting Waters Prohibited**. No person shall throw or place, or cause to be thrown or placed, any garbage, trash, refuse, paper, container, or nauseous or offensive matter into any pool, pond, tank, or fountain in any park.

In addition, attention is called to the fact that state law prohibits the littering or dumping of waste into lakes and other bodies of water.

3.4 **Littering and Dumping of Waste Matter Prohibited**. Attention is called to the fact that state law prohibits the littering or dumping of waste matter in any public park.

3.5 **Malicious Destruction of Property**. Attention is called to the fact that state law prohibits the malicious defacement, damage or destruction of real or personal property.

3.6 **Removal of Trees, Wood, Etc**. No person shall remove or take away any tree, wood, bush, turf, shrub, flower, plant, grass, soil, rock, or anything of like kind from any park without permission of the Executive Director.

3.7 **Penalties for Violation of Section 3.6**.

(A) Any person convicted of a violation of Section 3.6 of this Code shall be punished by a mandatory fine of not less than $50 nor more than $500 upon a first conviction, by a mandatory fine of not less than $100 nor more than $500 upon a second conviction and by a mandatory fine of not less than $150 nor more than $500 upon a third or subsequent conviction.

(B) The court shall, in addition, impose a civil penalty or an amount necessary to reimburse the Commission for the value of the tree, wood, bush, turf, shrub, flower, plant, grass, soil, compost, rock, water or other material removed as well as any labor expended to replant or otherwise restore the area affected. Any revenue collected as a civil penalty pursuant to this Section shall be credited to the Commission.

3.8 **Interference with Port Commission Employees**. No person shall, with malice, interfere with or in any manner hinder any employee of the Commission or a duly authorized contractor while that person is engaged in constructing, repairing, or caring for any portion of the park or is otherwise engaged in the discharge of such employee's duties.

3.9 **Alcoholic Beverages**. No person shall consume alcoholic beverages of any kind in any building, children's playground, swimming pool, or restroom, except with the permission of the Executive Director.

3.10 **Persons Intoxicated by Alcohol or Drugs May Be Excluded**. Members of the San Francisco Police Department and Port Commission employees, including members of a Park Patrol, are authorized to order persons to stay out of, or to leave, any park, or any facility,

building or structure therein, when such officers or employees have reasonable cause to conclude that the person so ordered is under the influence of intoxicating liquor, any drug, or any "controlled substance" as that term is defined and described in the California Health and Safety Code, or any combination of any intoxicating liquor, drug, or controlled substance, and is in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others or interferes with or obstructs or prevents the free use of park property.

3.11 **Persons May Be Excluded Under Certain Circumstances**. Members of the San Francisco Police Department and Commission employees, including members of a Park Patrol, are authorized to order any person to stay out of or to leave any park, or any facility, building or structure therein, when such officers or employees have reasonable cause to conclude that the person:

(A) Is consuming alcoholic beverages in violation of Section 3.10 of this Code;

(B) Is using any drug or controlled substance, as defined above, or any combination of any intoxicating liquor, drug, or controlled substance; or

(C) Is doing any act injurious to any park or any building, structure or facility therein;

(D) While using any athletic facility or area, disobeys any rule or regulation governing such area or facility after being warned not to do so by a Commission or Park Employee, including members of a Park Patrol, when the employee has reasonable cause to conclude that such behavior damages or risks damage to park property or interferes with the use and enjoyment of such area or facility by other persons; or

(E) Behaves in so noisy, boisterous or rowdy a manner as to disturb spectators or participants at an athletic event.

3.12 **Refusal to Obey Lawful Order**. It shall be unlawful for any person to refuse to obey the lawful order of a police officer or an employee of the Commission made pursuant to Section 3.11 of this Code.

3.13 **Fighting, Disturbing Peace, Offensive Words**. Attention is called to the fact that state law prohibits unlawful fighting in public places, the malicious and willful disturbance of others by loud and unreasonable noise, and the use of offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

3.14 **Intoxication By Alcohol or Drugs**. Attention is called to the fact that state law provides that any person in a public place who is under the influence of intoxicating liquor, drugs, or certain specified substances and endangers himself or others or interferes with the free use of a public way is guilty of disorderly conduct.

Minors, Parents and Guardians Of. No parent, guardian or custodian of a minor shall permit or allow such minor to do any act or thing in any park prohibited by the provisions of this Code.

Article 4. Animals

Sec. 4.1 Dogs, Cats Only Allowed.
Sec. 4.2 Animals Prohibited from Certain Areas.
Sec. 4.3 Cats Must Be on Leash or in Transport Box.
Sec. 4.4 Vicious Animals Prohibited.
Sec. 4.5 Abandonment of Animals Prohibited.
Sec. 4.6 Feeding Animals Prohibited.
Sec. 4.7 Disturbing Animals, Birds, Fish Prohibited; Exceptions.

4.1 **Dogs, Cats Only Allowed**. No person shall lead, drive, conduct or otherwise bring or allow to remain in any park any animal, bird, fish or reptile other than dogs and domestic cats. This Section shall not apply to persons acting pursuant to a permit from the Commission when the permit allows the presence of such animal, bird, fish or reptile.

4.2 **Animals Prohibited From Certain Areas**. No person, other than members of the Police Mounted Detail when on duty, shall, in any park, allow any animal in his or her custody to enter any building, or any playground, sandbox or other area reserved for children, or to enter or drink the water of any drinking fountain, lake or pond, except at places designated and maintained for such purpose. Notwithstanding the above provision, a blind person may enter these areas with a guide dog.

4.3 **Cats Must Be on Leash or In Transport Box**. No person shall carry, lead, conduct or otherwise bring or allow to remain in any park a domestic cat unless the animal is on leash not exceeding six feet in length or in an animal transport box equipped with vent holes capable of providing the animal with sufficient air.

4.4 **Vicious Animals Prohibited.** No person shall keep or permit to remain in any park a noisy, vicious, or dangerous animal or an animal which unduly disturbs other persons in the park.

4.5 **Abandonment of Animals Prohibited**. No person shall abandon any animals in any park.

4.6 **Feeding Animals Prohibited**. It shall be unlawful for any person to feed or offer to any animal in any park any substance which would be likely to be harmful to it.

4.7 **Disturbing Animals, Birds, Fish Prohibited; Exceptions**. Except as provided in Article 7, Chapter VIII (Police Code) of the San Francisco Municipal Code, it shall be unlawful for any person, including City and County of San Francisco, its officers, employees or agents, to hunt, chase, shoot, trap, discharge or throw missiles at, molest, disturb, capture, injure, or destroy any animal in any park, or to permit any animal in such person's custody or control to do so; provided, however, than any mole or any gopher, mouse, rat or other rodent which is

determined by said Executive Director to be a nuisance may be destroyed by said Executive Director or a designated representative; and provide, further, that any animal other than a mole or a gopher, mouse, rat or other rodent which is determined by said Executive Director to be a nuisance or a hazard to persons using said areas or to be a hazard to plants or other horticulture, may, in a humane manner, be live trapped by said Executive Director and delivered to the Animal Control Officer for disposition pursuant to the provisions of Sections 41.7 through 41.9, inclusive, of Article 1, Chapter V (Health Code) of the San Francisco Municipal Code.

Article 5. Traffic Regulations

Sec. 5.1 Operation and Parking of Vehicles.
Sec. 5.2 Towing of Vehicles.
Sec. 5.3 Commercial Vehicles Prohibited.
Sec. 5.4 Parking of Sightseeing Buses.
Sec. 5.5 Transportation of Residential or Commercial Garbage.
Sec. 5.6 Soliciting Passengers for Vehicles Prohibited.
Sec. 5.7 Penalties.
Sec. 5.8 Exceptions.

5.1 **Operation and Parking of Vehicles**.

(A) No person shall drive or propel any vehicle within any park except upon the paved roads, driveways, and highways provided or unpaved roads designated by sign or signal for use by such vehicular traffic;

(B) All persons operating vehicles must drive or propel them in a careful manner, at a lawful rate of speed, and in accordance with the rules and regulations of the Commission, San Francisco Traffic Code, Port of San Francisco Harbor Traffic Code and California Vehicle Code;

(C) No person shall drive or propel any vehicle on any planted area or on any access road or unpaved service road or fire trail in any park;

(D) No person shall park any vehicle on any lawn, or planted area, or unimproved area or on any pedestrian or equestrian lane, or on any access road or unpaved service road or fire trail or in any manner so as to block access to or exit from any service road or access road or fire trail, or in any other place in the park where the rules and regulations of the Commission prohibit vehicular parking, unless allowed otherwise by permit;

(E) No person shall wash, grease, or repair any vehicle in any park except insofar as repairs may be necessary for the immediate removal of any damaged or disabled vehicle from the park;

(F) No vehicle shall be parked on any road, place or highway in any park except on the extreme side of said road, place or highway and immediately adjacent to an curb or any planted portion of the park; provided, however, that the Commission shall have full power and authority to set aside suitable space for the parking of any vehicle off any road, place or highway. The extreme right of said road, place or highway shall be deemed to be the right-hand side of any road, place or highway as measured or applied in the direction in which any vehicle is traveling. Nothing in this Section shall be deemed to prohibit parking on the extreme left side of any on-

way road or highway, provided such parking is otherwise permitted, which side shall be deemed to be the left-hand side of any road or highway as measured or applied in the direction in which any vehicle is traveling.

(G) No person shall park any automobile or any other vehicle, including a horse trailer, whether attended or unattended, in any park, between the hours of 10:00 p.m. and 6:00 a.m. except (1) when attending an event or function authorized by the Commission or Executive Director, and then only when the person parks the vehicle in an area specifically designated for such parking in connection with said event or function; (2) when such parking is necessary because of an emergency, such as a flat tire or other mechanical failure, in which case the vehicle shall not be parked any longer than necessary; or (3) when a sign is posted or notice is otherwise provided that parking is permitted in a designated area between 10:00 p.m. and 6:00 a.m., or some portion of those hours.

(H) No person shall, in any park, allow any automobile or other vehicle to remain parked in any parking lot which is open for public use and for which a fee is charged for parking, for a period of more than 24 hours after the expiration of the period for which the fee is charged, unless otherwise allowed by permit.

(I) No person shall park any "oversized vehicle" defined herein as any vehicle longer than 19 feet and/or wider than seven feet, eight inches, whether attended or unattended unless allowed otherwise by permit.

(J) No person shall, in any park, allow any automobile or any other vehicle that is disabled to remain parked in any parking lot which is open for public use and for which a fee is charged for parking, unless otherwise allowed by permit.

5.2 **Towing of Vehicles**. Whenever any member of the San Francisco Police Department, employee or lessee authorized by the Commission finds any vehicle parked in violation of Sections 5.1(D), (E), (F), (G), (H), (I), or (J) of this Code, such officer, employee or lessee may provide for the removal of such vehicle, so long as signs have been posted to inform the public that vehicles so parked are subject to removal and, with respect to Section 5.1(H), so long as there is an attendant on duty or other facilities permitting the patron to pay or remit the parking charges at the time the vehicle is first parked.

The procedure for removal and impounding of vehicles shall be as is provided for in applicable provisions of the San Francisco Traffic Code and Sections 22850 to 22855 of the California Vehicle Code.

Moreover, any vehicle stopped, parked or left standing in such a manner as to violate Sections 5.1(D), (E), (F), (G), (H), (I), or (J) of this Code is an obstruction to the free use of property and a nuisance within the meaning of Part III of the Civil Code of California relating to nuisances and the abatement thereof.

5.3 **Commercial Vehicles Prohibited**. No person shall bring or cause to be brought into any park any vehicle designed, used or maintained primarily for the transportation of goods, wares, merchandise, soil, building material or other article or thing of commerce or trade unless such person is bring such vehicle into a park by permission of the Executive Director.

5.4 **Parking of Sightseeing Buses**. No person shall park a sightseeing bus in any park unless such person (1) has obtained a permit from the Commission and paid any fee which may be required by the Commission for the issuance of such a permit and (2) parks in an area which has been designated by the Commission as a parking area for sightseeing buses, either by the posting of a sign or by written notice kept on file with Executive Director of the Commission and made available to any interested person upon request.

5.5 **Transportation of Residential Or Commercial Garbage**. It is unlawful to transport residential or commercial garbage within any vehicle within the confines of any park. "Garbage" shall include, but not be limited to, the following: Dry or wet fill, emptied food containers, metallic machinery parts, auto parts, refuse, offal, vegetables, paper, dirt, remains of food, newspapers, filth or rubbish. This section shall not apply to an authorized scavenger service which is servicing any facility or area in any park.

5.6 **Soliciting Passengers For Vehicles Prohibited**. No person shall solicit or arrange or contract or make any agreement for or establish or maintain any stand or other equipment for procuring customers or passengers for any carriage, coach, automobile, bus or other vehicle, let or used for hire, in any park without first having obtained a permit to do so from the Commission. Nor shall any person drive or park a taxicab in any park for the purpose of procuring customers unless such person is responding to a call for a taxicab.

5.7 **Penalties**. A person who violates Section 5.1(C), (D), (E), (F) or (G) of this Code shall be guilty of an infraction and upon conviction thereof shall be punished for the first offense by a fine not to exceed $50; for the second offense committed within a one-year period by a fine not to exceed $100; for a third and each additional offense committed within a one-year's period by a fine not to exceed $250.

This Section shall not be deemed to contradict Section 137 of this Code concerning the towing of vehicles in violation of Section 136 (D), (F) or (G).

5.8 **Exceptions**. The provisions of this Article shall not apply to any person employed by the City and County of San Francisco, the State of California, or the United States Government while in the discharge of authorized duties and while operating an official vehicle or any other vehicle with an appropriate permit displayed.

Article 6. Permits

Sec. 6.1 Permits-Purpose
Sec. 6.2 Definitions.
Sec. 6.3 Permits Required.
Sec. 6.4 Additional Activities Requiring Permits.
Sec. 6.5 Permit Procedure.
Sec. 6.6 Conditions.
Sec. 6.7 Permits-Basis for Denial

Sec. 6.8 Petitioning, Leafletting, Picketing, Soliciting.
Sec. 6.9 Reservations of Buildings.
Sec. 6.10 Sales Prohibited at Art Shows.
Sec. 6.11 Commercial Photography, Filming, Recording.
Sec. 6.12 Permits-Athletic Events.
Sec. 6.13 Permit Requests by Governmental Units.
Sec. 6.14 Permits-Rights Granted.
Sec. 6.15 Duties of Permittee.
Sec. 6.16 Permits-Failure to Obtain.
Sec. 6.17 Procedure for Billing Costs.
Sec. 6.18 Violation of Permit Conditions.
Sec. 6.19 Appeal.

6.1 **Permits-Purpose**. Although the First Amendment of the U.S. Constitution and Article 1, Section 9 of the California Constitution guarantee freedom of speech and association, the City and County of San Francisco is authorized to impose reasonable restrictions on the time, place and manner of such expression. In accordance with this right, the Commission requires permits for certain activities which occur on park property in order (1) to coordinate activities planned by different groups so that as many people as possible can use and enjoy the park at the same time; (2) to learn the details of the proposed activity in order to establish rules in order to establish rules aimed at preventing inconvenience or harm to the public or the park; (3) to require appropriate insurance in order to relieve the Commission of liability from any harm that occurs; and (4) to insure that recreational facilities most suited for the activity are used.

6.2 **Definitions**. For the purposes of this Article, the following terms shall be defined as indicated below:

(A) **Amusement Park Rides**- Rides of the type normally found in amusement parks or carnivals, such as ferris wheels.

(B) **Animal Show**- The formal exhibition of animals to the public or to a group of 25 or more persons for entertainment or competition.

(C) **Art Shows**- The exhibition or display of paintings, sculptures or other works of art, but not activities performed by street artists licensed pursuant to Part II, Chapter VIII (Police Code) of the San Francisco Municipal Code.

(D) **Band**- A group of musicians playing acoustical instruments normally played in a brass band.

(E) **Demonstration**- Carrying or wearing a sign or signs, singing, talking in unison or in any other manner expressing ideas, advocating causes or conveying a message to the public at large or to a particular person or persons.

(F) **Exhibition**- Public display of manufactured goods, plants or other objects but not displays by street artists licensed pursuant to Part II, Chapter VIII (Police Code) of the San Francisco Municipal Code.

(G) **Leafletting**- Distributing leaflets, handbills, notices or any written material to the public.

(H) **Orchestra**- A group of musicians playing string, percussion, brass and wood wind instruments.

(I) **Parade**- Any march or other organized movement or person from place to place or about a place.

(J) **Petitioning**- Requesting persons to sign a petition.

(K) **Publicize**- To inform the public of a planned event by means of newspaper articles or notices, radio or television stories or notices, announcements in public places, leafletting, posting signs or written notices in places viewed by the public, or by other means calculated to notify the public of an event.

(L) **Soliciting**- Requesting persons to contribute money or anything else of value for charitable, religious or political cause.

6.3 **Permits Required**. No person shall, without a permit, perform any of the following acts in any park:

(A) Conduct or sponsor a parade involving (1) 50 or more persons; (2) the use of any street in any park; or (3) vehicles.

(B) Conduct or sponsor an event in which persons engage in petitioning, leafletting, demonstrating or soliciting when the number of petitioners, leafletters, demonstrators, or solicitors engaging in one or more of these activities involves 50 or more such persons at the same time within an area circumscribed by a 500 foot radius.

(C) Sell or offer for sale books, newspapers, periodicals, or other printed material.

(D) Conduct or sponsor any exhibit, promotion, dramatic performance, theatrics, pantomime, dance, fair, circus, festival, juggling or other acrobatics or show of any kind or nature which has been publicized four hours or more in advance.

(E) Perform any feat of skill or produce any amusement show, movie or entertainment which has been publicized four hours or more in advance.

(F) Make a speech which has been publicized four hours or more in advance.

(G) Conduct or sponsor a religious event involving 50 or more persons;

(H) Conduct or sponsor a concert or musical performance which (1) has been publicized four hours or more in advance, or (2) utilizes sound amplification equipment, or (3) involves a band or orchestra.

(I) Participate in a picnic, dance or other social gathering involving 25 or more persons.

(J) Sell or provide food to persons, except that no permit is required when a person participating in a picnic or social gathering of 25 or fewer persons provides food to others who are also participating in the picnic or social gathering.

(K) Conduct or sponsor a race or marathon which involves 25 or more persons as participants or which obstructs or interferes with the normal flow of vehicular or pedestrian traffic.

(L) Conduct or sponsor any event which utilizes sound amplification equipment, as defined in Part II, Chapter VIII (Police Code) of the San Francisco Municipal Code.

(M) Conduct or sponsor an exhibition.

(N) Conduct or sponsor an animal show.

(O) Conduct a wedding ceremony.

(P) Conduct or sponsor an art show.

(Q) Operate any amusement park device. The Commission may prohibit the operation of such devices in any park or, if it allows such operation, may designate those locations where such operation is permitted.

(R) Conduct or sponsor an organized kite-flying event of any club or organization.

(S) Station or erect any table scaffold, stage, platform, rostrum, tower, stand, bandstand, building, fence, wall, monument, dome or other structure.

(T) Park any vehicle in any park in an area not normally used for parking vehicles or in an area normally used for parking vehicles when the vehicle is used in conjunction with an activity for which a permit is obtained pursuant to a provision of this Code other than this subsection.

6.4 **Additional Activities Requiring Permits**.

(A) Attention is called to other provisions of this Code which require persons engaging in certain activities to obtain a permit, including, but not limited to, the following:

(1) Launching or landing any airplane, helicopter, parachute, hang glider, hot air balloon or other machine or apparatus of aviation, in any park, or bringing into a park any balloon with a diameter of more than six feet or a gas capacity of more than 115 cubic feet;

(2) Bringing, or causing to be brought, for the purposes of sale or barter, or having for sale, or selling or exchanging, or offering for sale or exchange any goods, wares or merchandise;

(3) Constructing or maintaining any building, structure, tent or any other thing in any park that may be used for housing accommodations or camping;

(4) Remaining in any park for the purpose of sleeping between the hours of 10:00 p.m. and 6:00 a.m. in order to provide security services between said hours in any park.

(B) The Commission may by resolution require a permit for additional activities when such a requirement further the purposes set forth in Section 6.1 of this Code.

6.5 **Permit Procedure**. The Commission shall by resolution adopt procedures for the filing and processing of permit applications, which resolution shall be filed with the Port Commission and shall be made available to the public upon request. The resolution required by this Section, as well as any amendment thereto is subject to the prior approval of the City Attorney.

6.6 **Conditions**.

(A) The Executive Director or the Commission may impose reasonable conditions on approval of a permit application in order to insure that public or private property is not damaged and that the comfort, convenience, safety or welfare of the public is not disturbed. Such conditions may be imposed on a permittee after the permit application has been approved if information has been received by the Executive Director after such approval which would provide reasonable grounds for the conclusion that further conditions are necessary, including the condition that the location of the proposed activity be changed. The provisions of this Section are designed to secure for permit holders an opportunity fully to exercise the rights conferred upon them by the permit without unreasonably interfering with the rights of other members of the

public to use park property and adjacent areas or to engage in First Amendment activities. The Executive Director shall in no event impose conditions pursuant to this Section which are designed to limit the content of First Amendment expression engaged in by persons affected by the permit or which unreasonably interfere with the right of free speech.

(B) The conditions which may be imposed on permit applicants include the following: (1) posting a performance bond to insure the property is restored and cleaned at the conclusion of the permitted activity; (2) providing insurance to protect the City from liability from any harm that such activity might cause; and (3) agreeing to reimburse the Commission for any costs incurred by it in restoring damage to property caused by the actions of the permittee, its officers. employees, or agents, or any person who was, or reasonably should have been, under the permittee's control and to defend the City against, and indemnify and hold the City harmless from, any liability to any person resulting from any damage or injury cause by the actions of the permittee, its officers, employees, or agents, or any person who was or reasonably should have been, under the permittee's control.

(C) When an applicant for a permit to perform an activity which is protected by the First Amendment to the U.S. Constitution and for which a performance bond must be posted produces evidence that providing a cash performance bond would be impossible or so financially burdensome that it would preclude the applicant from using park property for the proposed activity, the Executive Director shall accept property in lieu of a cash performance bond so long as the property offered is of a type which will reasonably insure restoration and cleaning of the property to be used by the applicant at the conclusion of the permitted activity.

(D) No applicant shall be required to comply with the provisions of Subsection (B)(2) pertaining to insurance if the activity proposed is protected by the First Amendment of the U.S. Amendment of the U.S. Constitution and the applicant produces evidence that complying with those provisions is impossible or so financially burdensome that it would preclude the applicant from using park property for the proposed activity.

6.7 **Permits-Basis For Denial**. The Executive Director shall approve a permit application unless:

(A) A prior application for a permit to use the same location at the same time has been received and such application has been or will be approved authorizing an activity which does not reasonably permit multiple occupancy of the area;

(B) The proposed activity would conflict with a previously planned program sponsored by the Commission and scheduled for the same location as that requested by the applicant;

(C) The Executive Director has reasonable cause to conclude that the applicant or any person or persons participating in the proposed activity will, in connection with that activity, cause physical injury to person or substantial damage to property; provided, however, that in determining whether such reasonable cause exists the Executive Director shall not consider the content of expression which is proposed or anticipated;

(D) The proposed activity is inconsistent with the purpose for which the facility or area has been established or designated;

(E) The location selected is inappropriate because (1) the nature of the proposed activity or the number of person expected in connection with the activity would be likely to damage trees,

plants or other vegetation; (2) the activity would unduly disturb adjacent neighborhoods because of the nature of the proposed activity or the number of persons expected to be involved; or (3) other activities have been scheduled in an area or areas near the location proposed by the applicant, or they normally occur in such area or areas, and permitting the proposed activity to occur in the proposed location would unreasonably interfere with park use and enjoyment by participants in such activities;

(F) The applicant fails to obtain necessary approvals, permits, or licenses from other governmental departments or agencies;

(G) The applicant has not complied with the procedural requirements established by Commission resolution for the filing of permit applications;

(H) The applicant fails or refuses to pay a processing fee or a user fee, or both, which the Commission has established by resolution;

(I) The applicant fails or refuses to post a performance bond when required to do so by the Commission;

(J) The applicant fails or refuses to provide insurance when required to do so by the Commission;

(K) The applicant fails or refuses to execute an agreement to reimburse the Commission for any cost incurred by it in restoring damage to the property occasioned by, or arising out of, the permitted activity, and to defend the City against and indemnify and hold the City harmless from, any liability to any person occasioned by, or arising out of, the permitted activity, when such an agreement is required by the Commission;

(L) The application contains misrepresentations of material fact;

(M) The proposed activity is prohibited by law;

(N) The applicant refuses to comply with conditions reasonably imposed on approval of the permit application by the Executive Director or the Commission in order to insure that public or private property is not damaged and that the comfort, convenience, safety and welfare of the public are not disturbed.

Whenever a permit application is denied, the Executive Director shall inform the applicant of the reason for the denial and when a change in location would allow approval, shall offer alternative suitable locations.

6.8 **Petitioning, Leafletting, Picketing, Soliciting**.

(A) No person may be required to engage in petitioning, leafletting, demonstrating or soliciting so long as engaging in any of these activities, or any combination of these activities, does not involve 50 or more petitioners, leafletters, demonstrators, or solicitors at the same time within an area circumscribed by a 500-foot radius, provided.

(B) It shall be unlawful for any person to engage in petitioning, leafletting, demonstrating or soliciting in such a manner as to substantially obstruct any traffic of pedestrians or vehicles after being warned by a peace officer or a member of the Park Patrol not to do so.

(C) Where the park is a frequent site for the issuance of permits involving large groups of people, in order to prevent interference with the progress and enjoyment of these events, no person may engage in petitioning, leafletting, demonstrating or soliciting in these parks while an event is in progress for which a permit has been issued by the Commission except in those areas

designated as public assembly areas. No person shall be considered in violation of the prohibition contained in this subsection until he or she has been informed by a member of the San Francisco Police Department, a member of the Park Patrol, or a member of the Commission who displays proper identification of such employment that the event is being conducted pursuant to a valid permit or until the permit pursuant to which the event is being conducted has been shown to such person.

6.9 **Reservation of Buildings**. The procedure for reserving the use of any building in any park shall be established by the Commission and shall be kept on file with the Commission and made available to the public upon request.

6.10 **Sales Prohibited at Art Shows**. When conducting or participating in an art show in any park, no person shall sell or offer for sale any work of art.

6.11 **Commercial Photography, Filming, Recording**. No person shall engage in commercial photography, filming or recording in any park without first having obtained a permit. The procedure for obtaining such permits shall be established by the Commission and shall be kept on file with the Commission and made available to the public upon request.

6.12 **Permits-Athletic Events**. Athletic areas and structures, such as baseball diamonds, soccer pitches, football fields, and swimming pools may be reserved by obtaining a permit from the Commission.

6.13 **Permits Requested by Governmental Units**. Any processing or user fee established by the Commission for the use of park property may be waived where the applicant is the United States of America, the State of California or subdivision thereof, an agency or commission of the City and County of San Francisco, or other governmental unit.

6.14 **Permits-Rights Granted**. Any person possessing a valid permit, which states that an area has been reserved for such person's use, has the exclusive right to use the area or facility specified in the permit for the time specified. It shall be unlawful for any person to refuse to leave an area or facility which has been reserved by a valid permit when asked to do so by the person nor party displaying such permit, by a Commission employee, by a police officer, or by a member of the Park Patrol, and no person shall in any manner disturb or interfere with any person or party occupying the area under such a permit, nor with the belongings of such person or party.

6.15 **Duties of Permittee**. It shall be the duty of every permittee:

(A) To obey all laws and the terms and conditions of the permit;

(B) To clean the area used after the permitted activity is over and to restor the area and property used to the same condition as existed prior to the activity; and

(C) To reimburse the Commission for any expenses incurred by it, including the cost of labor, in cleaning and restoring the park or making repairs to property and equipment, which

expenses may be occasioned by the permitted activity.

6.16 **Permits-Failure to Obtain**. It shall be unlawful for any person to conduct or sponsor any activity which requires a permit without first having obtained the appropriate permit and, when requested to do so by a Commission employee, a member of the Park Patrol, or by a police officer, displaying such permit. Furthermore, it shall be unlawful to participate in such an activity with knowledge that it is being conducted without a permit when a permit is required pursuant to this Code.

6.17 **Procedure for Billing Costs**. Within 30 days of the exercise of any permit, the Executive Director shall determine and transmit to the permittee a bill for all cost above and beyond normal cleaning cost which are or will be incurred by the Commission in cleaning or restoring any park or making repairs to property and equipment, which costs were occasioned by, or arose out of, or arose out of, the activity engaged in pursuant to the permit. The permittee shall have 30 days from the transmission of such bill in which to pay or request adjustment of the same. Any request for adjustment shall be transmitted in writing to the Executive Director, who shall determine whether an adjustment is proper. The permittee shall pay the bill or adjusted bill promptly upon transmission to the permittee of a statement of the determination of the Executive Director with respect to the adjustment. Any request for adjustment shall be deemed waived if not timely or if not transmitted in writing.

6.18 **Violation of Permit Conditions**. Whenever a permittee or those under the control of the permittee violate any condition contained in the permit, a member of the San Francisco Police Department may revoke the permit. It shall be unlawful for any person to continue to engage in an activity for which a permit was required and issued after the permit has been revoked pursuant to this Section, provided, however, that no person shall be in violation of this Section until notice has been given that the permit has been revoked.

6.19 **Appeal**. The Commission shall by resolution adopt procedures for the appeal of the denial of a permit application to the Commission or, in those instances when a quorum of the Commission cannot be convened in a timely manner, to the Executive Director. The Commission or the Executive Director shall afford the applicant an opportunity for a hearing and may reverse, affirm or modify in any regard the determination of the Executive Director concerning the denial of a permit application. When the Commission affirms the denial of a permit application such a decision shall be based on one or more of the reasons listed in Section 6.7 of this Code. This duty may not be delegated.

Article 7. South Beach Park

Sec. 7.1 Authority of Redevelopment Agency.
Sec. 7.2 Wheeled Equipment Prohibited.

7.1 **Authority of Redevelopment Agency Commission**. Notwithstanding any other provision of this Code, so long as the Redevelopment Agency of the City and County of San

Francisco retains control, management and direction of South Beach Park under its lease with the Commission, the governing body of the Redevelopment Agency of the City and County of San Francisco shall have the exclusive authority to set rules for South Beach Park pursuant to Article 2. of this Code, to issue permits for South Beach Park pursuant to Article 6. of this Code, and to designate persons who shall perform all other functions for South Beach Park which would be performed by the Executive Director for any other park under this Code.

7.2 **Wheeled Equipment Prohibited**. No person, other than employees or agents of the Commission or its contractors when on duty, shall bring any wheeled conveyances, including but not limited to trucks, cars and skateboards, into South Beach Park except when acting pursuant to a permit issued by the Commission or its designee. Notwithstanding the above provisions, wheelchairs, stroller and toys appropriate for preschool children, such as wagons and tricycles, may be brought into South Beach Park without a permit. Bicycles may be walked through the park or locked in designated locations without a permit.

Article 8. Severability

Sec. 8.1 Severability.

8.1 **Severability**. If any of the provisions of this Code, or the application of such provisions to any person or circumstance, shall be held invalid, the remainder of this code, or the application of such provisions to persons or circumstances other than those to which it is held to be invalid, shall not be affected thereby.

Article 9. Penalties

Sec. 9.1 Penalties.

9.1 **Penalties**. Unless otherwise specified in this Code, any person violating any section of this Code shall be deemed guilty of a misdemeanor or an infraction. The complaint charging such violation shall specify whether the violation is a misdemeanor or infraction, which decision shall be that of the District Attorney; provided, however, that whenever a person has been arrested and incarcerated based solely on the violation or violations of this Code, he or she shall retain the right at the time of arraignment or plea to object to the offense being made an infraction, in which event the complaint shall be amended to charge the misdemeanor and the case shall proceed on the misdemeanor complaint.

Upon convictions of a violation charged as an infraction, the person so convicted shall be punished for the first offense by a fine of not less than $10 nor more than $50, and for a second and each additional offense by a fine of not less than $20 nor more than $100.

Upon conviction of a violation charged as a misdemeanor, the person so convicted shall be punished by a fine of not more than $500 or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment.

Sec. 10.1 Police Authority.

10.1 **Police Authority.** The Commission shall authorize peace officers or employees of the Commission to carry out the provisions of this code.

Exhibit 1

[to be attached]

APPENDIX A

PORT PROPERTY UNDER PARK CODE

All that certain property under the jurisdiction of the Port of San Francisco that is open for public access, as shown on the map attached hereto as Exhibit 1.

PORT OF SAN FRANCISCO

MEMORANDUM

February 20, 1996

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 278940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Anne Halsted
Hon. Francis J. O'Neill
Hon. Preston Cook

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of travel for one Port Representatives to Attend Meetings in Washington, D.C. of the Travel and Tourism Government Affairs Council on Proposed Federal Legislation Related to the Cruise Industry and other Meetings Regarding Transportation Funding, in accordance with the Fiscal Year 1995-1996 Budget.

DIRECTOR'S RECOMMENDATION: APPROVE ATTACHED RESOLUTION

The Travel Industry Association of America (TIA) is an umbrella organizations for prominent tourism groups in the United States. As part of its annual legislative program, TIA hosts a series of meetings and dinner for Members of Congress in Washington, D.C. This year's event will include meetings with other ports and tourism organizations on proposed changes to the Passengers Services Act. These reforms are critical to the long term marketing of new cruise business for the Port of San Francisco. Congressional hearings on these reforms are expected in March and the Port's Governmental Affairs Manager, Ms. Veronica Sanchez will confer with prominent tourism leaders and Congressional staff regarding these hearings and legislative proposals.

While in Washington, D.C., Ms. Sanchez will also meet with agency and Congressional representatives regarding the funding needs for Port projects such as the Ferry Building renovations and construction of a breakwater for the South Ferry Landing.

The estimated cost for the trip is as follows:	
Round-trip Airfare (SFO-Dulles)	$181.00
[Will use previously purchased ticket: $605.00]	
Hotel (3 nights @ $154.05 inc. 13% tax)	$462.15
Transportation (airport transfers, cabs)	$125.00
Meals ($40/day x 4 days)	$160.00
Telephone Calls	35.00
Total	$963.15

These funds are available for expenditure in the Port's FY 95-96 budget.

Prepared by: Veronica Sanchez, Manager, Governmental Affairs

THIS PRINT COVERS CALENDAR ITEM NO. 9A

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-22

WHEREAS, The Executive Director is requesting authorization for one Port Representatives to Attend Meetings in Washington, D.C. of the Travel and tourism Government Affairs Council on Proposed Federal Legislation Related to the Cruise Industry and other meetings regarding transportation funding (March 5-8, 1996), in accordance with the Fiscal Year 1995-1996 budget.

WHEREAS, The cost of this trip has been included in the Port Commission's Fiscal year 1995-1996 budget; now, therefore, be it

RESOLVED, that the Port Commission hereby approves this travel request.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of February 27, 1996.

_____
Secretary

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

February 21, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Preston Cook
Hon. Anne Halsted
Hon. Francis J. O'Neill

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of travel for two representatives to the national Passenger Cruise Convention at Miami, Florida, in accordance with the Port's Fiscal Year 1995-96 budget.

DIRECTOR'S RECOMMENDATION: APPROVE THE TRAVEL AS BUDGETED.

An area of growth opportunity for the Port of San Francisco lies in the marketing of its cruise facilities. Currently, spin-off revenues from cruise activity, at an average 50 calls per year, contribute in excess of $14 million to local labor, tourism, and support businesses throughout the City. Since 1994, the Port has dramatically increased the annual number of passenger vessels and passengers. We need to continue to foster this trend, and look forward to generating commercial interest in two new cruise markets:

1. An alternate homeport season outside of our traditional Alaska season (i.e. S.F./ Mexico winter itineraries), and

2. Coastal cruises, which will require legislative change.

THIS PRINT COVERS CALENDAR ITEM NO. 9B

The *SEATRADE* convention at Miami is the most widely recognized gathering of decision makers in the cruise and ship repair industries. More passenger vessel owners and operators have their corporate headquarters in Miami than in any other city in the world. By sending two Port representatives to speak knowledgeably on how San Francisco's facilities and location can benefit the passenger cruise market, we hope to attract additional Port of call interest.

We have budgeted the following amounts for our current fiscal year to cover this activity.

Two Airfares	$ 1,600
Exhibit & Registration Fee	3,000
Hotel (6 days)	1,700
Meals	500
TOTAL	**$ 5,800**

Prepared by: Carolyn Macmillan
Marketing Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Resolution No. 96-23

WHEREAS, the Executive Director is requesting authorization for two representatives to travel to the National Passenger Cruise Convention at Miami, Florida; and

WHEREAS, the purpose of this trip is to strengthen industry contacts; exhibit to key decision makers those Port attributes which can attract more passengers and benefit their operations; and introduce a winter itinerary utilizing Mexican ports of call, and

WHEREAS, the costs of this trip have been included in the Port Commission's Fiscal 1995-96 budget; be it

RESOLVED, that the Port Commission hereby approves this travel request.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 27, 1996.

_____
Secretary

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CITY AND COUNTY OF SAN FRANCISCO
PORT COMMISSION

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MINUTES OF THE MEETING
FEBRUARY 27, 1996

1. ROLL CALL

The meeting was called to order by Commission President Michael Hardeman at 4:07 p.m. The following Commissioners were present: Michael Hardeman, Frankie Lee, Anne Halsted, Frank O'Neill and Preston Cook.

2. APPROVAL OF MINUTES - February 13, 1996

ACTION: Commissioner Halsted moved approval; Commissioner O'Neill seconded the motion. All of the Commissioners were in favor; the minutes of the meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report

(1) Pier 45 - Mr. Bouey indicated that Sharon Lee Polledri, Director of Planning and Development, would give the Commission a status report of the Pier 45 Advisory Committee.

Ms. Sharon Polledri reported that on January 24, the Port convened an Advisory Group for Pier 45, which consists of 14 representatives from fish processors, fishermen, merchants as well as community and civic representatives. The purpose of the Advisory Group is to assist the Port in formulating an approach to the long-term use of the east side of Pier 45 (Sheds A and C)

After the five weekly meetings to date, there is general concurrence on an approach to Pier 45:

- First, the group will address the current needs of the fish processors who occupy the west side of the pier; this involves facilitating the movement and loading of trucks and employee parking in the valley.

- Second, investigate other fishing industry needs that can be accommodated on the pier, such as, the feasibility of additional fish processing space, relocating the informal fish trading on Jefferson Street to businesses on the pier, and looking into the need for space for seafood inspection and meetings.

- Once the needs of the fishing industry have been addressed, the remaining space on Sheds A and C can be considered for a Fisheries Institute, a recreational attraction or other uses.

  This approach is consistent with the policies in the Port's Waterfront Plan, which calls for reinvigorating the fishing industry as a priority for Fisherman's Wharf. The Plan also recognizes that it is the synergy between the historic fishing operations and visitor serving activities that have made Fisherman's Wharf such a popular destination.

In the past five weeks, the following work has been done:

- Refocussed the NOAA grant of approximately $70,000 for transportation studies to evaluate the feasibility of locating a public attraction such as a Fisheries Center next to seafood industry uses.

  With the efforts of Veronica Sanchez and Congresswoman Pelosi's representative on the Advisory group, Phil De Andrade, it appears likely that our request will be approved. If this occurs, the group anticipates starting the study in the summer and concluding the work by the end of September.

- Addressed the immediate needs of the fish processing tenants for security in the valley, such as, prohibiting vehicular access in the evenings and installing enforceable signs for parking and loading areas. These improvements have been handled by Kirk Bennett and Elliott Riley.

- Formed two subcommittees of the Advisory Group. One committee will study the needs of the fish processors. The other committee will study other issues related to the fishing industry. The subcommittees will bring forward their recommendations to the wider group later in March. Once the needs of the fishing industry have been identified, other issues that could occur on the pier will be discussed.

She noted that Dave Mercado of our Planning and Development group, is the lead person on this project. Mr. Mercado has synthesized the issues that have been raised into identifiable studies and outlined how they can be addressed, within the guidelines of the grant or the Port's procedures.

Commissioner Cook asked for clarification of "the end of September date" and wondered if that was for a transportation study. Ms. Polledri concurred and added that the Advisory Group asked that the grant funds be used for this purpose rather than the original scope. If this request is approved, the funds would be used to look at traffic and transportation issues related to the seafood industry uses on the pier. She noted that the grant funds were to be used for exhibit designs for the Fisheries Center.

Commissioner Cook stated that he was under the impression that the entire study on Pier 45 would be relatively short-term and that it would conclude in May or

June. Ms. Polledri concurred and added that under the original terms of the grant, the deadline for completing the work using grant funds would have been May or June. The Advisory Group was heartened to see the success of the fish processing uses on the west side of Pier 45 and given that success, the group wanted to look at how to ensure its continued success and its compatibility with other uses. As a result, the group asked staff to apply to NOAA to refocus the grant which necessitated an extension to allow this study.

Commissioner Cook inquired if any of the information (such as the transportation study) is valid for any use after the study is concluded and the various fish processing uses are not needed. Ms. Polledri replied that there would be components of the study that could be useful given other planning efforts in the area.

Commissioner Cook indicated that he is concerned about the timing because only a few weeks into study, there has already been an extension that doubles the length of the study. He's apprehensive that six months from now when the transportation component is completed there would be other areas that need further study. He inquired on how to come to a conclusion for a relatively small area and finalize the study. Ms. Polledri replied that it's natural in that dynamic, to look at the wider universe before focusing on a particular area. In the next few weeks, they will look at an implementation plan for Pier 45.

Commissioner Cook inquired if the study is looking at each shed individually or at the entire space of both sheds for some type of use. Ms. Polledri replied that they are looking at both sheds.

Commissioner Cook inquired about the Port's policy on fish processing at other Port locations that may not be up to the federal standards, e.g., Fish Alley. Ms. Polledri stated that this is an area that they would have to investigate and will report back. Commissioner Cook inquired if the committee is looking into it. Ms. Polledri replied that they are focusing on Pier 45. Commissioner Cook emphasized its importance because if it's determined that, under the new federal standards, Fish Alley or other facilities are not up to the code standard, they would to have to move to one of the sheds on Pier 45. One would think that is a very logical way to pursue possible other uses of Sheds A and C. Ms. Polledri replied that it is logical; however, there are also some physical constraints related to servicing Sheds A and C for seafood industry uses. That is why the Advisory Group, over the next few months, would like to study the maneuverability of trucks, truck operations and parking for Pier 45.

Commissioner Cook requested a monthly status report and asked that the study be defined. He also requested the minutes of the meetings, if taken, and copies of any reports from the group. Ms. Polledri concurred and Mr. Bouey reiterated that, through Sharon Polledri's office, the Commission will be provided a monthly report on progress made and pending issues.

Commissioner O'Neill inquired if the access to the chapel will be maintained. Ms. Polledri concurred but added that it is not, however, a focus of their study. Commissioner O'Neill inquired if Pier 45 leases have strong language to prevent leases from being transferred for a different use not related to fish processing. Ms. Polledri replied that was her understanding but will confirm it with Mr. Kirk Bennett. Commissioner O'Neill inquired if Pier 45 would be available this year for berthing of the USS Duluth during Fleet Week. Ms. Polledri replied she was not aware of this but will report back to the Commission.

(2) SPCA/Waterfront Carriage - Mr. Bouey stated that at the last meeting, the Commission received a copy of a letter from SPCA regarding the Waterfront Carriage's treatment of horses and Commissioner Cook requested staff to look into this matter. He reported that staff did contact SPCA and were told that Waterfront Carriage has done nothing illegal nor is accused of mistreating the horses. They, however, have some concerns but will work them out with Waterfront Carriage. Waterfront Carriage subsequently sent the Port a letter and indicated that they took exception to some of the comments made in the letter as written by Mr. Avanzino and thought that perhaps what transpired in the meeting between the SPCA representative and Mr. Jeff Sears was a little different than that portrayed in the letter. More important, he indicated that Waterfront Carriage was willing to work with SPCA on this matter. Mr. Bouey mentioned that Mr. Sears and a representative from SPCA are in attendance to answer any questions the Commission may have.

Commissioner Cook indicated that he has received a copy of the letter from Jeff Sears and there seems to be two different viewpoints regarding the treatment of horses. He hopes that everyone understands that the Commission is watching the operation and that both Waterfront Carriage and SPCA work out any and all remaining issues.

(3) Mr. Bouey reported that at the last Commission meeting, public testimony was received with regard to the Purchaser's Request for Proposals (RFP) for janitorial services for the Ferry Building and the Agricultural Building. The Port sent a letter to the Purchaser requesting an investigation of the allegations filed by the union. He received a copy of the Purchaser's letter to the union requesting an outline of their concerns regarding the apparent low bidder and to bring those allegations with the supporting documentation to the Purchaser no later than February 28. At that point, the Purchaser will investigate those claims and determine whether or not GMG is, in fact, the lowest responsible bidder. He concluded that this issue seems to be taking its proper course and will report back as events transpire.

4. LEGISLATIVE

5. TENANT & MARITIME SERVICES

A. Approval of percentage rental adjustments for Castagnola's, Cresci Brothers', Fisherman's Grotto, Franciscan Restaurant, Guardino's, Nick Lighthouse, Sabella &

Mr. Bouey indicated that a consultant's report was commissioned and completed for percentage rent for these restaurants. For these restaurants, the consultant recommended 7% with rent credits because of the substructure work that these tenants are responsible for and recommended 9% for retail. Today, Port staff recommends 6-½%, without rental credits for food service. The Port is charging less rent but the tenant will continue to be responsible and at risk for maintaining the substructure. Port staff also recommend 8-½% for retail.

Commissioner Lee commented that these restaurants are very valuable tenants to the Port and that their prosperity is our prosperity. The restaurants bring tourists and locals to the waterfront. A lot of hard work has been expended by staff and he's glad it has come to an amicable solution.

Commissioner Halsted, for public information, stated that the rates are retroactive to the original effective date. Mr. Bouey concurred.

Mr. Reuben, representing the restaurants, indicated that he submitted a letter to the Commission (and asked that the letter be made a part of the record). He wanted the record to reflect that they too, like the Port, hired a consultant. He then read the first paragraph of the letter . . . "On behalf of the eight restaurants that are on the calendar for consideration today, I want to express to the Port staff, Director Dennis Bouey, and the Commission, that we are pleased and somewhat relieved to have resolved our differences. Although this agreement has taken quite some time, I think I speak for all the owners when I say that they are glad to put this issue behind them so that they can focus their intention on the operation of their establishments and prepare for the season which is fast approaching." He pointed out that was the general feeling of all the restaurants that have settled. There are two who have not and hope that they would be able to get the remaining issues resolved in the next day or two.

Commissioner O'Neill asked if there are two restaurants that the Port has not settled with. Mr. Bouey concurred and added that they are, however, the same tenant - Alioto's #8 and Alioto Expo. Commissioner O'Neill inquired if they have a parking component of their lease that is different from the other eight restaurants. Mr. Bouey replied that none of the eight restaurants that are before the Commission today has parking as part of their lease. The Alioto Expo lease has a parking component. Commissioner O'Neill asked if that is being worked on now and if the general terms that they voting on are applicable to the Fisherman's Wharf. Mr. Bouey concurred and added that parking is the remaining issue to be resolved. Commissioner O'Neill inquired when this item will be before the Commission. Mr. Bouey stated that it's his hope and intent if an agreement is reached with the Alioto's it will appear at the next meeting; if not, it will appear the meeting after.

Commissioner Hardeman commented that he's glad the negotiations are finally concluded. He agreed with Commissioner Lee's comments that these restaurants are very valuable resource for the Port of San Francisco and are glad to have these

restaurants as tenants and thanked everyone involved in the negotiations.

ACTION: Commissioner O'Neill moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

B. Approval of Reaffirmation and First Amendment to Lease and Consent to Encumbrance with Bundox, Inc., dba the Waterfront Restaurant, at Pier 7-½ (Resolution No. 96-15)

Mr. Bouey stated that this item was before the Commission in October 1994, and was approved subject to the Waterfront Restaurant procuring the appropriate financing. Unfortunately, the financing has taken a bit longer than was thought. There are some changes that have been required because of the lender. He reminded the Commission that the Waterfront Restaurant is investing $3.4 million into this facility. The Waterfront Restaurant by any terms is a model restaurant, a credit to the Port, its sales are among the highest on the waterfront as well as its sales per sq. foot are among the top restaurants. To go forth with this lease is in the Port's best interest.

Mr. Bouey enumerated the following changes to the lease: (1) the term of the lease has been changed from 20 to 22 years in order to allow the tenant to make the necessary changes; (2) the reaffirmation of the lease is a part of this resolution; (3) the extension of the prior lease by necessity has to be extended to June 1996.

More specifically, the lender has required the following changes: (1) if the lease terminates for any reason, or is rejected, the lender has a right to enter into a new lease on the same terms and conditions; (2) the assignment of the lease made in connection with the lender's documents may be made without the Port's consent if the assignment is made by a judicial or non-judicial foreclosure. The Port reserves the right, after the assignment has been made, to approve the tenant; (3) the Port also agrees not to accept a voluntary surrender of the lease without the lender's consent; and (4) the Port also agrees that disposition of insurance proceeds shall be subject to the rights of the lender.

Commissioner O'Neill saluted everybody for negotiating the lease. The Port is getting a terrific resource and is allowing a tenant to prosper. Commissioner Hardeman restated the same comments he made as that of the eight restaurants. The Waterfront Restaurant is a valuable tenant and glad to see that staff and Director reached a mutually satisfactory agreement.

ACTION: Commissioner Cook moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

C. Approval of Port Park Code Covering South Beach Park, Warm Water Cove and Public Access Areas located on Port property. (Resolution No. 96-21)
This item has been put over.

Mr. Bouey requested that this item be put over until Port staff have had time to develop policy and use guidelines.

Commissioner Cook asked for clarifications on a few issues. Commissioner Cook pointed out that there is no definition of the affected areas on the map.

On Page 6, sections 3.2 and 3.3, he inquired about the inclusion of the "bay" instead of a pond, pool, or lake. Legal Counsel Neil Sekhri commented that the Port holds this land on public trust. Under the constitution, the people are granted the right to swim in the waters of the bay. Unless there are specific public health and safety concerns that would require the Port to restrict swimming in the bay in certain areas, swimming cannot be restricted. He indicated that the purpose of this park code is particularly for public access areas. Legal Counsel Julie Van Nostern interjected that swimming is allowed in the bay, e.g., South End Rowing Club and other organized users. Commissioner Cook stated that there are areas under Port's jurisdiction that people can launch a boat or swim which the Port may not want them to do. Ms. Van Nostern stated there are certain piers involving containers, such as Piers 94/96 and Pier 80, that the Port might want to restrict public access. Commissioner Cook suggested to look at swimming and boating, if the Port is defining areas and making specific recommendations for a code.

Commissioner Cook inquired about the permissibility of food sales in the area and requested for its inclusion. Mr. Sekhri referred to Section 2.8 on page 3.

Commissioner Cook inquired about the reference on fish. Mr. Sekhri says that this section will be clarified. In Section 4.2, Commissioner Cook asked if the "bay" should be included. In Section 4.7, fish being prohibited, Commissioner Cook asked for a clarification. In Section 6.10 , page 17, Commissioner Cook inquired about sales prohibiting art shows. Mr. Sekhri stated that the model for this code was the City's Park Code. If the Commission has policy issues different from it, it is welcome to make a change as they see fit.

In Section 6.12, Commissioner Cook inquired about the swimming pools. Mr. Sekhri replied that the bay waters are not covered by this code, just the public access areas and added that the police code encompasses these issues.

Commissioner Halsted requested a description of the Port's role with regard to the public trust, i.e. an overall wording that incorporates the nature of the Commission's function be included in the resolution

6. FACILITIES & OPERATIONS

7. PLANNING & DEVELOPMENT

8. ADMINISTRATION

9. CONSENT CALENDAR

A. Approval of travel for one Port representative to attend meetings in Washington, D.C. on March 5 - 8, 1996 of the Travel Industry Association and to meet with legislative and agency representatives regarding port projects and proposed Federal legislation, in accordance with the Port's Fiscal Year 1995-1996 Budget. (Resolution No. 96-22)

B. Approval of travel for two Port representatives to attend the National Passenger Cruise Convention at Miami, Florida, on March 11-16, in accordance with the Port's Fiscal Year 1995/96 Budget. (Resolution No. 96-23)

ACTION: Commissioner Cook moved approval; Commissioner O'Neill seconded the motion. All of the Commissioners were in favor; the items on the consent calendar were adopted.

10. NEW BUSINESS / PUBLIC COMMENT

Commissioner Hardeman reported that he attended Saturday's Commission orientation meeting, at the Mayor's request. He requested the Director to look at Saturday meetings some time in the near future at a time when all the Commissioners and staff are available. Mr. Bouey replied that he would work out a schedule that is beneficial to all.

Commissioner O'Neill inquired if the Port was given the alternative of meeting on Saturdays and/or after regular business hours during the week. Commissioner Hardeman replied that both times were mentioned but he was under the impression that they would like the Commission to have a Saturday meeting at some point.

Commissioner Cook stated that he wants to ensure that there is a cost analysis prepared for the Commission before a decision is made to meet on Saturdays. It would be inconvenient not only for some Commissioners but also a number of staff. The Port's constituency is located up and down the waterfront; most of which are business oriented and business hour oriented. For issues of significant public interest, e.g., power plant, it may be appropriate to meet in the evenings so as not to interfere with their business day.

Commissioner Hardeman said that if a Commission doesn't meet as requested, the President of the Board of Supervisors Kevin Shelley, will create a legislation forcing Commissions to meet on Saturdays. This was a strong suggestion not only from the Mayor but the President of the Board as well.

Commissioner Cook stated that this Commission meets the needs of its constituents and it would be interesting to see the attendance and the cost this presents to the Port.

Mr. Bouey commented that staff will certainly heed the Mayor's and the Board's order but pointed out that Commissioner Cook raises some valid points, e.g., the Civil Service Commission, largely have employees appearing before them and it creates a hardship if they have to attend during the day. In their situation, may be Saturdays or evenings are more appropriate; our constituency is a little bit different. As Commissioner Cook pointed out, there are certain issues that would warrant the Commission to meet in the evenings or Saturdays. Mr. Bouey recommended sending a letter to the Mayor asking for clarification. With regard to the change in venue, he cited the Airport as an example. He

pointed out that their constituency is located at the Airport but the Commission meets at City Hall, which creates a hardship for those constituency to attend. Another example would be the Department of Social Services, where their constituency is located throughout the City, it would be perhaps fair to rotate venues. The Port Commission meetings are unique wherein they are located where its constituency is. He indicated that he has zero problem with moving the meetings elsewhere but added that the Port just might be the exception to the rule.

Commissioner Halsted stated that years ago the practice of meeting at 10 in the morning was not conducive to public participation. The meeting was changed to 4 p.m. in order for both staff and the public to attend meetings. It made the Port more accessible but did not change public participation at the meeting. She encouraged the Commission to think about 5 to 6 p.m. as meeting times when people would be likely to attend. Commissioner Hardeman inquired when the change was made. Commissioner Halsted replied that it was around the end of the 80's. Commissioner Hardeman indicated that this information is necessary to include in the letter to the Mayor. Commissioner Hardeman reiterated that Mr. Bouey will draft a letter that is representative of the Commission's concerns and the Commission want to have a spirit of cooperation with City Hall.

Commissioner Lee indicated that he does not have any problem with whatever time the meeting will take place but agrees with Commissioner Cook's comments that the Port has a constituency to serve its needs.

Commissioner Halsted commented that the Commission Room is not large enough to accommodate a large group of people especially when a controversial issue is before the Commission. She suggested that staff should always have an alternate place to meet to accommodate more people when necessary.

Commissioner O'Neill commented that for most of our constituency, Saturday is a very busy work day for them. As well, Mr. Bouey pointed out that our tenants or prospective tenants often bring attorneys or consultants with them at meetings. He suggested writing a letter to the Mayor's office asking for clarification.

Commissioner Lee stated that he understands that this might be Commissioner Halsted's last meeting. He expressed the same feelings he had a few months ago. Commissioner Halsted thanked Commissioner Lee for the expression of warmth.

Commissioner O'Neill commented that last week, they attended two funerals - former Governor Pat Brown and Rhoda Goldman, whose husband, Dick Goldman, served on the Port Commission years ago. They were both old friends of the Port and friends of San Francisco. He requested that the Commission adjourn the meeting in their memory.

11. EXECUTIVE SESSION

At 5:03 p.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following:

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - *This session is closed*

to any non-Port representative.

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: Dennis P. Bouey, Executive Director
AES Representative: Mark Woodruff

Under Negotiation: ____ Price ____ Terms of Payment __✓__ Both

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS

1) Republic Insurance Company, et.al. v. CCSF; CCSF v. Somerset Insurance Services, formally West Coast Marine Managers, Inc., et.al. U.S. District Court No. C94-2627 FMS

2) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

(a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

3) Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (3 cases).

Commissioners Hardeman, Lee, Halsted, Cook and O'Neill returned from executive session and convened in public session at 6:30 p.m.

ACTION: Commissioner Halsted moved approval to not disclose any information discussed in the executive session; Commissioner Lee seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 6:32 p.m.

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3/12/96
Canceled

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PORT OF SAN FRANCISCO

NOTICE OF CANCELLATION

THE REGULAR PORT COMMISSION MEETING SCHEDULED FOR
TUESDAY, MARCH 12, 1996 AT 4:00 P.M.
IS HEREBY CANCELLED

♦ • ♦ • ♦ • ♦

THE NEXT REGULAR PORT COMMISSION MEETING
IS SCHEDULED FOR

TUESDAY, MARCH 26, 1996 at 4:00 p.m.

in the Port Commission Room
Suite 3100, Ferry Building
San Francisco, CA 94111
(415) 274-0406

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SAN FRANCISCO
PORT COMMISSION

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REGULAR MEETING
4:00 P.M., TUESDAY, MARCH 26, 1996
FERRY BUILDING, SUITE 3100
SAN FRANCISCO, CALIFORNIA

3/26/96

AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - February 27, 1996

3. **EXECUTIVE**

   A. Executive Director's Report

      1) Status Report on the Urban Design Guidelines

   B. Commendation for Commissioner Anne Halsted. (Resolution No. 96-26)

4. **LEGISLATIVE**

5. **TENANT & MARITIME SERVICES**

   A. Approval of consent to assignment of lease, resetting percentage rental, change in type and class of business, and encumbrance of leasehold regarding Fish Alley Bar and Grill located at 400 Jefferson Street. (Resolution No. 96-27)

   B. Approval of lease amendment for Franciscan Restaurant located at Pier 43-½ to provide rent credits for proposed renovation. (Resolution No. 96-28)

6. **FACILITIES & OPERATIONS**

   A. Authorization to advertise for competitive bids for Contract No. 2610, "Pier 68 Shipyard Crane Improvement Project." (Resolution No. 96-25)

   B. Authorization to advertise for competitive bids for Contract No. 2594, "Ferry Building, Stage 2, Earthquake Repair." (Resolution No. 96-29)

   C. Authorization to award consultant contract for Fisherman's Wharf Lagoon Lighting," to F.W. Associates for $105,000. (Resolution No. 96-30)

7. **PLANNING & DEVELOPMENT**

8. ADMINISTRATION

9. CONSENT CALENDAR

A. Approval of travel for one Port representative to attend the American Association of Port Authorities Finance Seminar in Toronto, Canada, on May 15-17, 1996, in accordance with the Port's Fiscal Year 1995-1996 Budget. (Resolution No. 96-24)

B. Approval of travel for one Port representative to attend the Annual IEG Sponsorship Profits Convention in Chicago, Illinois, on April 14-17, 1996, in accordance with the Port's Fiscal Year 1995-1996 Budget. (Resolution No. 96-31)

C. Authorization to accept the work and make final payment to the contractor for Contract No. 2591, "Pier 26 and 28, Removal of Lead Contaminated Soils from Roofs." (Resolution No. 96-32)

10. NEW BUSINESS / PUBLIC COMMENT

11. EXECUTIVE SESSION

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - ***This session is closed to any non-Port representative.***

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: Dennis P. Bouey, Executive Director
AES Representative: Mark Woodruff

Under Negotiation: ____ Price ____ Terms of Payment ✓ Both

An executive session has been calendared to discuss real property negotiations between the Port and AES, a California corporation, regarding Cogeneration Plant. This is specifically authorized under California Government Code Section 54956.8.

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION AND ANTICIPATED LITIGATION MATTERS

1) Johnson v. CCSF, et al; CCSF v. National Park Service et al
U.S. District Court No. 95-2675 SAW, pursuant to subdivision (a) of California Government Code Section 54956.9

2) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

(a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

3) Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case).

4) Application for Leave to Present a Late Claim - David G. Plant, pursuant to California Government Code Section 54956.9(b)(1).

The City Attorney is of the opinion that based on existing facts and circumstances, discussion of existing and anticipated litigation matters in open session would prejudice the legal position of the Port. An executive session is specifically authorized under California Government Code Section 54956.9(a)(b)(c)(1).

C. Vote in open session on whether to disclose Executive Session discussions (S.F. Admin. Code Sec. 67.14)

12. ADJOURNMENT

Public comment is permitted on any matter within Port jurisdiction, and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. Please fill out a speaker card and hand it to the Commission Secretary.

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 19, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: **Status of Urban Design/Public Access Guidelines for the Waterfront Land Use Plan**

DIRECTOR'S RECOMMENDATION: REVIEW PRESENTATION OF PROGRESS ON URBAN DESIGN/PUBLIC ACCESS GUIDELINES

With an overall goal of reuniting the City and the waterfront, the Draft Waterfront Land Use Plan calls for preparing urban design guidelines for Port property that further define the character of development on the waterfront. The Port is now in the process of preparing design guidelines that will address urban design, public access and historic resource issues throughout Port property. Design guidelines will be the implementing tool to express design goals and define specific characteristics or parameters for structures and public improvements in the future.

Urban design guidelines are being prepared jointly by Port staff and the Department of City Planning, with advisory assistance from urban designer, John Kriken of Skidmore, Owings, and Merrill. The guidelines are being guided and reviewed by a technical advisory committee (TAC). The TAC is an eight member committee composed of representatives from Save The Bay Association, Bay Conservation and Development Commission, the Waterfront Plan Advisory Board, American Institute of Architects, American Society of Landscape Architects, SPUR, the Landmarks Preservation Advisory Board, and the Department of City Planning.

THIS PRINT COVERS CALENDAR ITEM NO. 3A

The guidelines will be prepared for adoption by the Planning Commission and the Port Commission, and will be compatible with City policies or coordinated with changes to City policies. BCDC also hopes to adopt the guidelines.

Port staff and the TAC are now in the process of developing design objectives for the subareas as identified in the Draft Plan and different property types within Port jurisdiction. Design objectives are being prepared on several levels: general design objectives that address all of the subareas; design objectives addressing the general needs of individual subareas; and design objectives for each of the three property types -- seawall lots, bulkhead sites and piers within each subarea. Design objectives are being developed on a preliminary basis and will then be tested for consistency with Port, City Master Plan, and BCDC goals and policies. Economic feasibility, the condition of existing structures, and public acceptance will also be considered prior to completion of the guidelines.

At the Port Commission meeting, staff will present progress on the design guidelines including preliminary design objectives for several of the subareas.

Prepared by: Dan Hodapp
Project Manager

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 18, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Resolution Awarding Commissioner Anne Halsted the Order of Maritime Merit, with the Rank of Commander

DIRECTOR'S RECOMMENDATION: APPROVE THE AWARD

Commissioner Anne Halsted, the first woman member of the San Francisco Port Commission, has served for a total of 11 years, including two years as president. She was initially appointed in 1984 by Mayor Dianne Feinstein and reappointed in 1991 by Mayor Art Agnos.

The Port Commission has benefitted greatly from her knowledge of strategic planning and community affairs. She gave strong endorsement to the fair and equitable treatment of Port Commission issues and encouraged an open line of communication among the Port Commission, the surrounding communities and waterfront industries.

The Port Commission does hereby express its appreciation, best wishes and sincerest gratitude to Commissioner Anne Halsted. To honor her for invaluable, unselfish and lasting contributions to the Port Commission and the waterfront community, staff recommends that she be awarded the Order of Maritime Merit, with the rank of Commander.

Prepared by: Ben Kutnick
Director of Administration

THIS PRINT COVERS CALENDAR ITEM NO. 3B

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-26

WHEREAS, Anne Halsted, the first woman member of the San Francisco Port Commission, has served for a total of 11 years, including two years as president, and was initially appointed in 1984 by Mayor Dianne Feinstein and reappointed in 1991 by Mayor Art Agnos; and

WHEREAS, she has provided the Commission with sound strategic direction and extensive knowledge of community affairs resulting from her background as Vice President with United States Leasing International Inc., President of SPUR, Chair of the Steering Committee for San Francisco State's Urban Institute, recipient of Outstanding Women in the Bay Area award and Board Member of various organizations, including: the San Francisco Redevelopment Agency, the Institute on Aging, San Francisco Tomorrow, the Telegraph Hill Dwellers Association, Friends of the Urban Forest, the Legal Aid Society of San Francisco and the Women's Campaign Fund; and

WHEREAS, she gave strong endorsement to the fair and equitable treatment of Port Commission issues and encouraged an open line of communication among the Port Commission, the surrounding communities and waterfront industries; now therefore be it

RESOLVED, that the San Francisco Port Commission recognizes Anne Halsted's invaluable, unselfish and lasting contributions to the Port Commission and the waterfront community by conferring upon her the Order of Maritime Merit, with the rank of Commander.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 26, 1996.

_____
Secretary

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 13, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Consent to assignment of lease, resetting percentage rental, change in type and class of business, and encumbrance of leasehold regarding Fish Alley Bar & Grill, located at 400 Jefferson Street

DIRECTOR'S RECOMMENDATION: CONSENT TO ASSIGNMENT OF LEASE, RESETTING PERCENTAGE RENTAL, CHANGE IN TYPE AND CLASS OF BUSINESS, AND ENCUMBRANCE OF LEASEHOLD

BACKGROUND

Fish Alley Bar & Grill

Fish Alley Bar & Grill, located at 400 Jefferson Street at Fisherman's Wharf, operates under Port Lease No. L-9781 (the "Lease"), whose term commenced on April 1, 1975, and expires April 20, 2036. The existing tenants under this lease are Sanford Cohn and Jake Francisco (collectively the "Assignor"). The original leased premises contained 6,283 sq. ft, and the Lease was amended, in December, 1977, to increase the size of the leased premises to 7,430 sq. ft. This lease amendment also expanded the permitted uses to include the sale of art objects, in addition to the operation of a seafood and Italian restaurant and bar. The Assignor currently operates a 5,760 sq. ft. full service restaurant and bar on the leased premises, and subleases 1,670 sq. ft. to an art gallery, Addi Galleries. The leased premises are indicated as Parcels 1 and 2 on the attached Exhibit A.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

The Lease provides that the minimum rental is subject to cost of living increases every five years during the lease term, and the current minimum rental is $3,173.62, or $0.43 per sq. ft. The Lease also provides for percentage rental, which was initially set at 5% for food, 7% for alcoholic beverages (and all other items sold through the bar), and 10% for all other uses. The percentage rental for art objects was set at 7% in December, 1977. The percentage rental is subject to adjustment every five years during the lease term. The most recent adjustment date was April 1, 1995, but this deadline was extended by the mutual agreement of the parties, provided that the percentage rental would be set retroactively to April 1, 1995.

The total (minimum and percentage) rental paid to the Port under the Lease for the calendar year 1995 was $70,214. The gross sales generated at the leased premises during that calendar year totaled $1,098,936, or $148 per sq. ft. Two-thirds of the gross sales were generated by the art gallery, and the other one-third by the restaurant and bar.

Proposed Sale and Lease Assignment

The Assignor has entered into a Restaurant Purchase-Sale Agreement ("Sale Agreement") to sell its business to The SFO Forecast Inc., a California corporation ("Assignee"), whose principal is Arthur N. Hoppe. This firm currently operates five retail businesses at Fisherman's Wharf, four along Jefferson Street (The Bay Company, Bay Stop, Forecast Jeans, and The Forecast) and one at Pier 39 (Beach Bums). Although this firm does not currently operate any restaurants, Arthur Hoppe has been involved in restaurant enterprises in the past. The purchase price for this business is $900,000, of which $675,000 is in the form of a seven-year promissory note with monthly installment payments of principal and interest.

The Assignee plans to redevelop the leased premises, including the interior and exterior, into an Italian market place, with the name of *Piazza del Mare.* The preliminary floor plan of this market place is shown on Exhibit B. Over three-quarters of the facility will continue to involve restaurant uses, with a seafood and Italian theme. There will be an open and visible kitchen, and there will be stations throughout the market place for a sourdough bakery, a coffee bar, a raw fish bar (including fish handlers cracking crabs), prepared kitchen items, and alcoholic beverages. The operation will include both full table service and casual dining service. The restaurant seating will include a sidewalk cafe along Jefferson Street. The food pricing is planned to be inexpensive, and the menu will include a wide selection of children's meals. Less than 23% of the facility will be devoted to retail uses (similar to the existing utilization of the leased premises), and the retail merchandise will consist of wines and food oriented items. The exterior facade will have a new unified rustic design, in keeping with its Fish Alley location.

The project concept and design has been reviewed with members of the Fisherman's Wharf community, who supported the concept and design, with some minor design changes. The design is also being reviewed by the Port's design advisors, and this design review will be completed as a part of the building permit application process. The facility is located outside of BCDC jurisdiction, and does not therefore involve BCDC review. The redevelopment project has been reviewed with the San Francisco Department of City Planning, and it was determined that the project would be categorically exempt from CEQA review and that it would not involve a change of use requiring a Conditional Use Permit.

PROPOSED CONSENT AGREEMENT

Port staff has negotiated a Consent Agreement with the Assignor and Assignee, whereby the Port will consent to the assignment of the Lease, the resetting of percentage rental, a change in the type and class of business, and encumbrance of the leasehold by Assignor. The fundamental provisions of this Consent Agreement are as follows:

1. **Consent to Assignment**. The Port's consent to the assignment is subject to the Assignor not being released from the Tenant's obligation under the Lease. Any assignment, transfer or sublease of the Lease or leased premises, or any material alteration of the leased premises, shall require Assignor's prior written approval, not to be unreasonably withheld. Any alterations or modifications to the Lease made without Assignor's consent shall not be binding on Assignor. Port's consent is further conditioned upon the Assignee spending not less than $150,000 in tenant improvements to the leased premises by December 31, 1997 (which deadline may be extended by the Port's Commission in its sole discretion).

2. **Agreement to Resetting Percentage Rental**. The percentage rent will be reset retroactively to April 1, 1995, as follows:

Retail Wine Sales:	6.75%
Other Retail Sales:	8.75%
Food, alcoholic beverages, and all other items sold through the bar	
First $50,000 of monthly gross receipts:	6.75%
Monthly gross receipts between $50,000.01 and $75,000:	7.75%
Monthly gross receipts in excess of $75,000:	8.75%

The gross sales reporting and record keeping provisions will also be modified to conform to those in the Port's current Standard Form Lease.

3. **Changes in Type and Class of Business**. The class of restaurant permitted under the Lease shall continue to be a seafood and Italian restaurant and bar, but the class shall be expanded to include bakery and coffee products. The type of permitted restaurant uses shall include both full service restaurant uses and casual dining restaurant uses. ("Full service restaurant uses" are defined as restaurant uses where food is cooked to customers' orders and all food and beverages are ordered by and served to customers at their table or counter for consumption on the leased premises.) While the total floor area of the leased premises devoted to retail sales shall continue to be limited to a maximum of 1,670 sq. ft., retail merchandize permitted under the Lease will be expanded to include wine, food, and ancillary products related to wine, food, and cooking.

4. **Encumbrance**. The Port will consent to a $675,000 encumbrance of the leasehold by the Assignor.

5 **Effective Date**. The Consent Agreement shall be effective upon the date that escrow closes pursuant to the Sale Agreement. In the event that this sale does not close, the Sale Agreement shall be null and void.

The gross annual sales generated on the leased premises are conservatively projected by the Assignee to be in the range of $1.1 - $1.7 million after the redevelopment of the property.

Following the approval of the assignment, the Port intends to grant the Assignee a Sidewalk Encroachment Permit and Revocable License for the sidewalk on the north side of Jefferson Street adjacent to the leased premises ("License Area"), as shown on Exhibit A. This license will include the following provisions:

1. It will be a temporary, revocable license for the nonexclusive use of the License Area as a sidewalk cafe. The Port will have the right to approve the tables, chairs, and other furniture used on the License Area, which are to be located so as not to interfere with general pedestrian use of the sidewalk. The furniture must be removed from the sidewalk and stored in the premises demised in the Lease when the restaurant is not open for business.

2. The Port shall have the right to approve all alterations and improvements to the License Area, and the Licensee agrees by July 1, 1996 to remove the existing raised wooden sidewalk located on the License Area and replace it with a concrete sidewalk.

3. All sales made in the License Area shall be included in the gross receipts under the Lease, upon which percentage rental shall be paid to the Port.

4. The license shall include legal provisions involving maintenance, insurance, indemnity, hazardous materials, and City requirements.

Prepared by: Frederick D. White, Director, Tenant & Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-27

WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, Under Charter Section 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Port Lease No. L-9781, dated March 12, 1975, as amended (the "Lease"), with Sanford Cohn and Jake Francisco (successors in interest to Sal and Dom's Fish, Incorporated) as Tenant (collectively "Assignor"), provides that assignment of the Lease requires the consent of the Port, which consent shall not be unreasonably withheld; and

WHEREAS, Port Commission consent has been requested for the assignment of the Lease from Assignor to The SFO Forecast Inc. ("Assignee"), and for the encumbrance of the leasehold by the Assignor; and

WHEREAS, Pursuant to Section 2.(c) of the Lease, the percentage rental due under the Lease is subject to review and adjustment every five years during the lease term if the Port determines that the percentage rent for like uses in San Francisco in the vicinity of the leased premises have changed; and

WHEREAS, The Lease provides that the leased premises shall be used to conduct a seafood and Italian restaurant and bar, and such other uses that are reasonably related thereto, and for the retail sale of art objects; and

WHEREAS, Pursuant to Section 5 of the Lease, change of the type or class of business or change of the allowed uses are permitted with the consent of the Port; and

WHEREAS, Port Commission consent has been requested for a change in the types and classes of businesses permitted by the Lease on the leased premises; now, therefore be it

RESOLVED, That the Port Commission approves the assignment of the Lease to Assignee and the encumbrance of the leasehold by the Assignor subject to the conditions indicated in the Memorandum to the Port Commission for Agenda Item 5A for the Port Commission meeting on March 26, 1996; and, be it further

RESOLVED, That the Port Commission determines that the percentage rents for like uses in San Francisco in the vicinity of the leased premises have increased to the rates indicated in the Memorandum to the Port Commission for Agenda Item 5A for the Port Commission meeting on March 26, 1996; and, be it further

RESOLVED, That the percentage rental of the Lease shall be adjusted retroactively to April 1, 1995, as indicated in the Memorandum to the Port Commission for Agenda Item 5A for the Port Commission meeting on March 26, 1996; and, be it further

RESOLVED, That the Port Commission hereby consents to the change in the types and classes of businesses as indicated in the Memorandum to the Port Commission for Agenda Item 5A for the Port Commission meeting on March 26, 1996; and, be it further

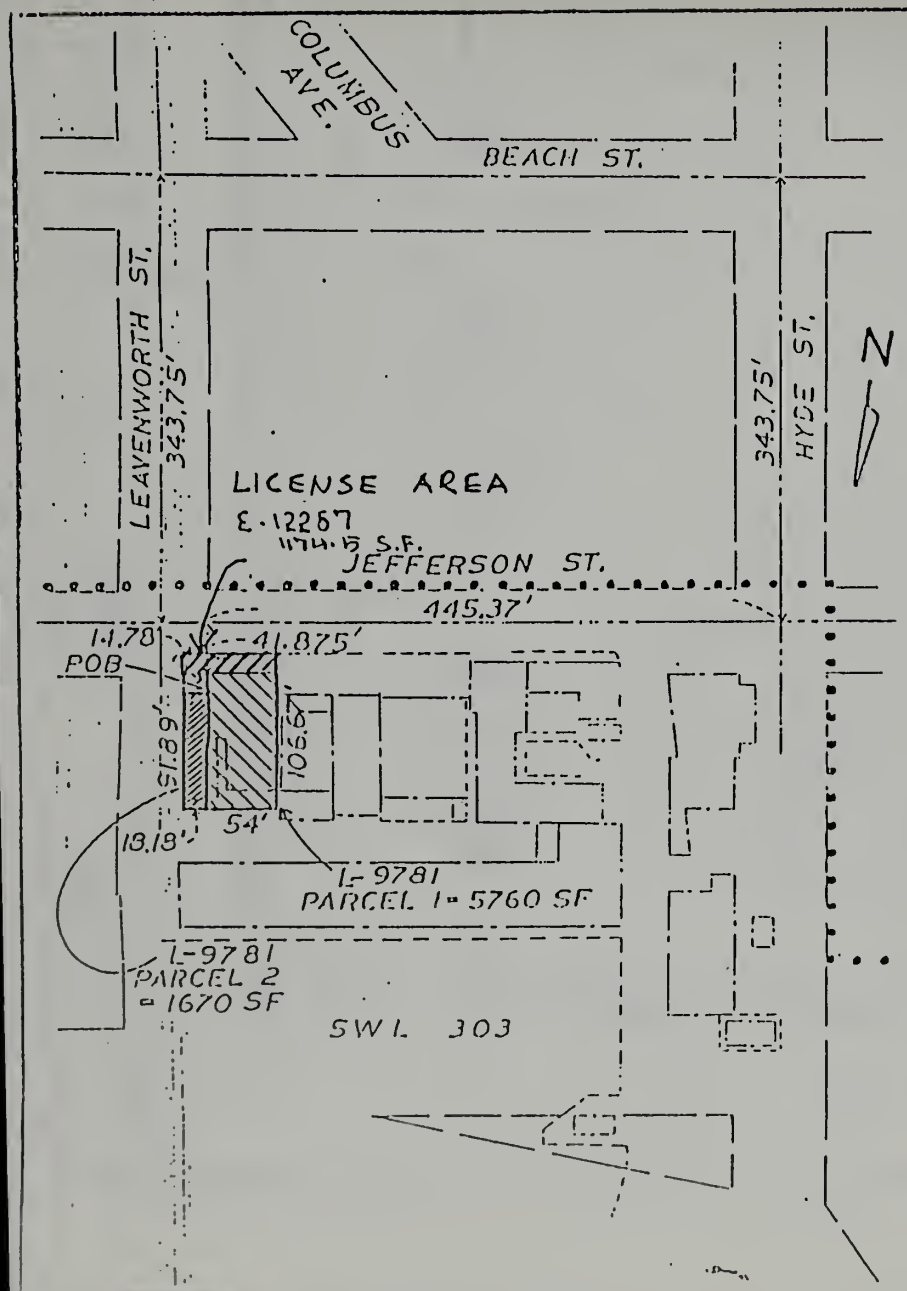
RESOLVED, That the Port Commission authorizes the Executive Director, or designee, to execute all such appropriate documentation needed to implement the Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 26, 1996.

_____

Secretary

G:\FISHALLE.MEM\KB:ibn\March 13, 1996



Contract No. E 11257

APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE_____

Chief Engineer

NO.	DATE	DESCRIPTION

REVISIONS

PORT OF SAN FRANCISCO
SAN FRANCISCO PORT COMMISSION
DEPARTMENT OF ENGINEERING

SFO FORECAST INC.

IN CHARGE OF	CHECKED BY
MADE BY	DATE
TRACED BY	SCALE
DRAWING NO. EXHIBIT A	SHEET NO. 1 OF 1 SHEETS

FLOOR PLAN - PUBLIC USE AREA

EXHIBIT B

PIAZZA DEL MARE
ALTERATIONS AND RENOVATION

600 JEFFERSON STREET
SAN FRANCISCO CA

WES ROMINE ARCHITECTURE

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 18, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of lease amendment for Franciscan Restaurant located at Pier 43 ½ to provide rent credits for proposed renovation

DIRECTOR'S RECOMMENDATION: APPROVE LEASE AMENDMENT

BACKGROUND

Franciscan Restaurant

The Franciscan Restaurant at Pier 43 ½ has an existing Port Lease No. L-7496 (the "Lease"), the term of which commenced May 1, 1970, and expires April 30, 2036. The tenant under the lease is Franciscan Restaurant, a California corporation (the "Tenant"), whose principals include Ken Burger and Kevin Westlye. The leased premises include an existing 13,223 sq. ft. restaurant and retail building, containing a full service restaurant and bar, and approximately 1,900 sq. ft. of retail space. In October, 1987, the Lease was amended to add an outdoor crab stand, which contains 1,282 sq. ft.

THIS PRINT COVERS CALENDAR ITEM NO. 5B

The Lease provides for minimum rental, which is subject to cost of living increases every five years during the lease term. The minimum rental was further adjusted in October, 1987, as a part of the lease amendment adding the crab stand. The current monthly minimum rental is $12,530.87, or $0.95 per sq. ft. (based on 13,223 sq. ft.). The Lease also provides for percentage rental, which was initially set at 5% for food, 6.5% for alcoholic beverages (and all other items sold through the bar), and 6.5% for all other uses. The percentage rental for the crab stand was set at 7% in October 1987.

The Lease states that the percentage rental is subject to adjustment every 25 years during the lease term. Pursuant to this provision, the Port Commission at its February 27, 1996 meeting (by Resolution No. 96-03) reset the percentage rental retroactively to May 1, 1995, as follows: 6.5% for food and alcoholic beverages (and all other items sold through the bar), including the crab stand; and 8.5% for all other uses, including retail sales.

The total (minimum and percentage) rental paid to the Port under the Lease for the Fiscal Year 1994/95 (ending June 30, 1995) amounted to $226,111.00, or $17.10 per sq. ft. The gross sales generated by the Franciscan Restaurant during that fiscal year totaled $3,866,688, or $292 per sq. ft. This compares to an average of $471 per sq. ft. for all the restaurants at Fisherman's Wharf.

Management of the Franciscan Restaurant changed in July, 1995. The new management has made a number of changes in the restaurant's operation, including a shorter menu emphasizing fresh fish with a contemporary presentation. This produced a 15% increase in sales for the six-month period ending December 31, 1995, as compared to the same period for the preceding year. To further expand its sales, the Tenant plans to completely renovate the Franciscan Restaurant, including the interior and the exterior. The Tenant has requested that the Port participate in the cost of this renovation pursuant to the Port's Rent Credit Policy.

Rent Credit Policy

On December 11, 1991, the Port Commission adopted a Rent Credit Policy by Resolution No. 91-118. This policy provides that, for tenants which pay percentage rent to the Port, rent credits may be granted for improvements to their leased premises which "provide for expansion of tenant's business, thereby increasing the financial return to the Port." In such instances, the Rent Credit Policy states that the rent credits are to be structured in a manner that the tenant and the Port "share in both the needed investment and the expected return." The Rent Credit Policy establishes the following further conditions for such rent credits being granted:

1. The improvements "will contribute to higher revenue capacity, resulting in higher percentage rents to the Port."

2. "The tenant's costs are only partially reimbursable (tenant shares in the investment) and the credits are structured to allow the Port to realize a higher return from the property as a result of the investment."

3. "Credits are taken against a portion of percentage rent overages (not minimum rents), with a limit on the time for recapture."

4. "Rent credits must be negotiated in advance and approved by the Port Commission prior to commencement of the work for which the credit is given."

5. "The amount of credit is limited to the documented cost of the agreed-upon work."

Proposed Renovation

The proposed renovation project includes: a complete remodel of the first and second floors of the Franciscan Restaurant; the relocation of the crab stand into the restaurant building; renovation of the entire exterior facades; and the renovation of the public access areas around the building. The scope of this work is shown on the floor plans attached as Exhibit A to this memorandum. The total construction budget for this renovation is $2,597,185.00, and the breakdown of these costs is shown on Exhibit B attached to this memorandum.

The proposed renovation project has been reviewed by both the San Francisco Department of City Planning and by BCDC. The Department of City Planning determined that the proposed project is categorically exempt from CEQA review and that it did not involve a change of use requiring a Conditional Use Permit. BCDC also agreed to amend its permit to allow the renovation, subject to certain improvements being made to enhance the public access around the building, which will be included in the scope of the renovation work. The design of the proposed project has also been reviewed with numbers of the Fisherman's Wharf community and by the Port's design advisors. The design advisors raised some concerns regarding specific design elements of the new exterior facades, and these concerns are being addressed by the Tenant as a part of the Port's building permit review process.

PROPOSED LEASE AMENDMENT

The proposed Third Amendment to Lease No. L-7496 will include revised financial provisions involving the granting of rent credits for the proposed renovation, as well as other changes in some legal provisions of the Lease so as to update them in line with the Port's current Standard Form Lease.

1. **Minimum Rental**. Upon the substantial completion of the proposed renovation, the minimum rental will increase 50% from $150,370.44 per year (paid in monthly installments) to $226,116.00 per year (paid in monthly installments). This new

minimum rental will equal the total rental (minimum and percentage) paid by the Franciscan Restaurant under the lease for the Fiscal Year 94/95 and will equate to approximately $1.43 per sq. ft. per month. The minimum rental will continue to be subject to cost of living adjustments every five years, with the next adjustment being effective May 1, 2000.

2. **Rent Credits**. As shown on Exhibit B, a maximum of $1,898,185.00 of the projected construction costs will be eligible for rent credits, as compared to the total renovation budget of $2,597,185.00. Eligible costs include only permanent improvements, and exclude removable fixtures and maintenance work. Rent credits will be limited to fifty percent (50%) of the eligible costs, or a maximum of $949,093.00. The Tenant will be required to document the eligible costs that it actually expends, and the maximum rent credits may be reduced after the review of this documentation by Port staff. Following the substantial completion of the renovation, Franciscan Restaurant will be allowed to take rent credits on a monthly basis at a rate of fifty percent (50%) of each month's Overage Rental (consisting of the percentage rental due in excess of the minimum rental for that month), as illustrated by the following formula:

Gross Receipts for Month	X	Percentage rental rates (%)	=	Percentage Rental
Percentage Rental	-	Minimum Rental	=	Overage Rental

Overage Rental X 50% = Maximum monthly rental credit

Tenant shall be able to continue taking rent credits until the earlier of the following occurs:

(a) Tenant has received the full amount of the allowed rent credits;
(b) seven years after substantial completion of the renovation project; or
(c) the Lease terminates.

The rent credits will be further conditioned upon the renovation being substantially completed no later than December 31, 1997, which deadline may be extended by the Port Commission at its sole discretion.

3. **Updated Legal Provisions**:

(a) Gross sales reporting and record keeping provisions;
(b) Alteration and improvement provisions;
(c) Indemnity and exculpation language, including hazardous materials;

(d) Possessory interest language;
(e) Required City provisions, including Non-discrimination, MacBride Principles-Northern Ireland, Tropical Hardwood Ban, and Tobacco Products Advertising Ban; and
(f) Proximity to Waterfront Transportation Project.

ANALYSIS

The Tenant has prepared Conservative and Aggressive Projections of the expected gross sales that will be generated by the Franciscan Restaurant following the proposed renovation project. The Conservative Projection anticipates that the gross sales of the Franciscan Restaurant will be approximately $455.00 per sq. ft., and the Aggressive Projection anticipates that they will be approximately $554.00 per sq. ft. Port staff prepared an analysis that calculated the additional rent which the Port could receive over a ten-year period, based upon the proposed renovation, the gross sales projections, and the recommended rent credit provisions. This analysis compared the potential rent that the Port should receive after this renovation to the rent that it would likely receive if there is no renovation. After rent credits, the Port is projected to receive an additional $1.2 million rent under the Conservative Projection, and an additional $2.7 million under the Aggressive Projection. This compares to the maximum rent credits of $949,093.00.

It should be further noted that the Tenant will only receive rent credits if its gross sales actually do increase. In the unlikely event that the gross sales instead go down following the renovation, the rent received by the Port will not decrease because the minimum rental will be increased to include the amount of percentage paid during the 1994/95 Fiscal Year. The Port therefore assumes little risk granting these rent credits, and it will likely receive a substantial return from the improvements partially funded by the rent credits.

Prepared by: Frederick D. White, Director, Tenant and Maritime Services

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-28

WHEREAS, Charter Section 3.581 empowers the Port Commission with power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, under Charter Section 3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Franciscan Restaurant, the "Tenant" under Port Lease No. L-7496 (the "Lease"), proposes improvements to the premises demised in the Lease to expand Tenant's business, thereby increasing the financial return to the Port, as provided for in the Rent Credit Policy adopted by the Port Commission by Resolution No. 91-118; and

WHEREAS, Tenant has requested that it be granted rent credits for its planned improvements to its leased premises pursuant to the Rent Credit Policy; now, therefore be it

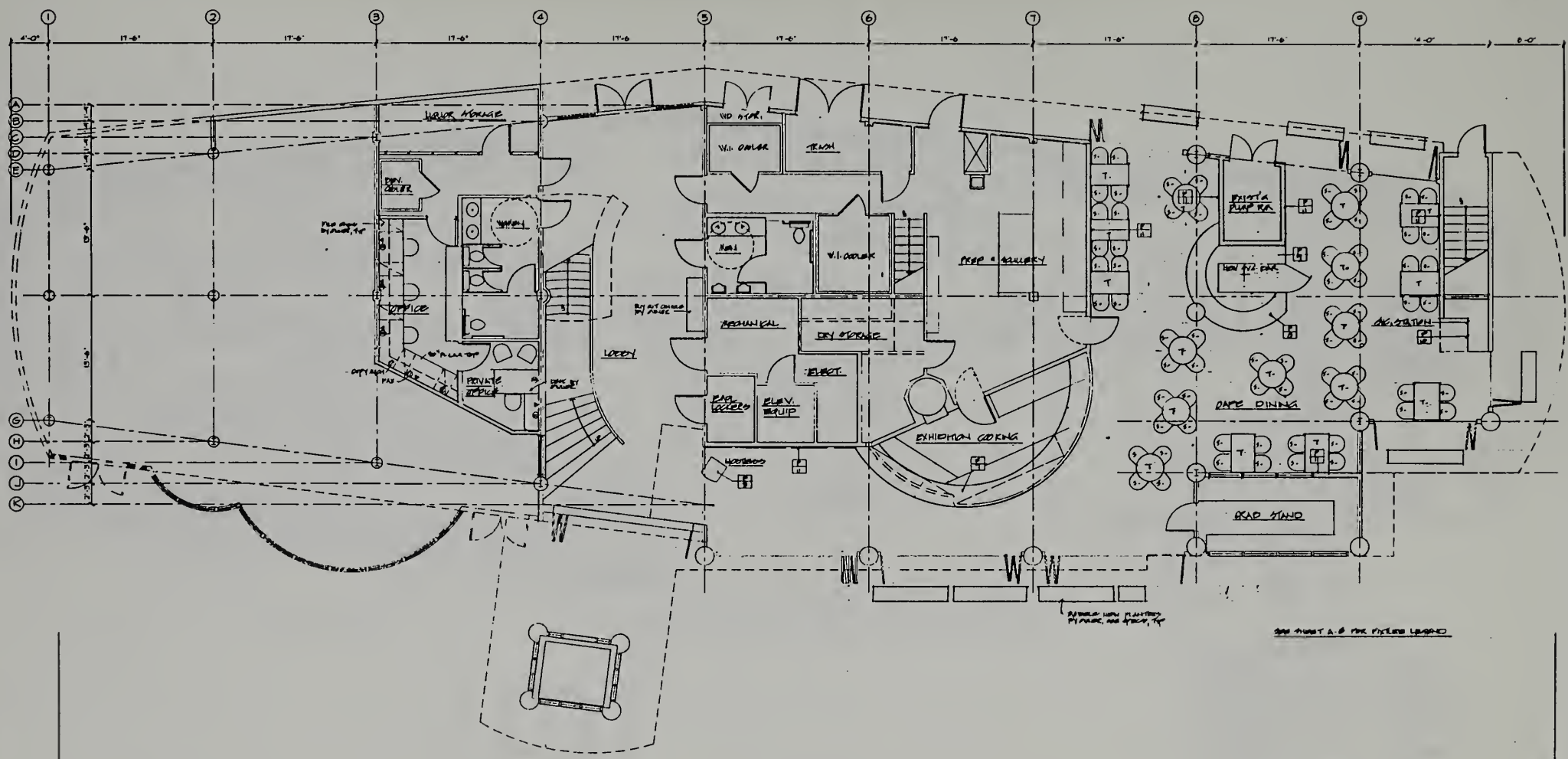
RESOLVED, That the Port Commission hereby approves the Third Amendment to Lease No. L-7496 incorporating the terms set forth in the Memorandum for Agenda Item 5B for the Port Commission meeting on March 26, 1996 in such form as is approved by the City Attorney; and that the Executive Director is hereby directed to forward said amendment to the San Francisco Board of Supervisors for approval by ordinance pursuant to City Charter Section 7.402-1, and to thereafter execute the amendment.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 26, 1996.

_____
Secretary

G:\WP51\AGENDAS\FRANCIS2.MEM\KB:ibn\March 11, 1996

EXHIBIT A



1 FIRST FLOOR PLAN

Design Development

BAUM | THORNLEY ARCHITECTS

Addition and Remodel
Franciscan Restaurant
Fisherman's Wharf
San Francisco, CA 94133

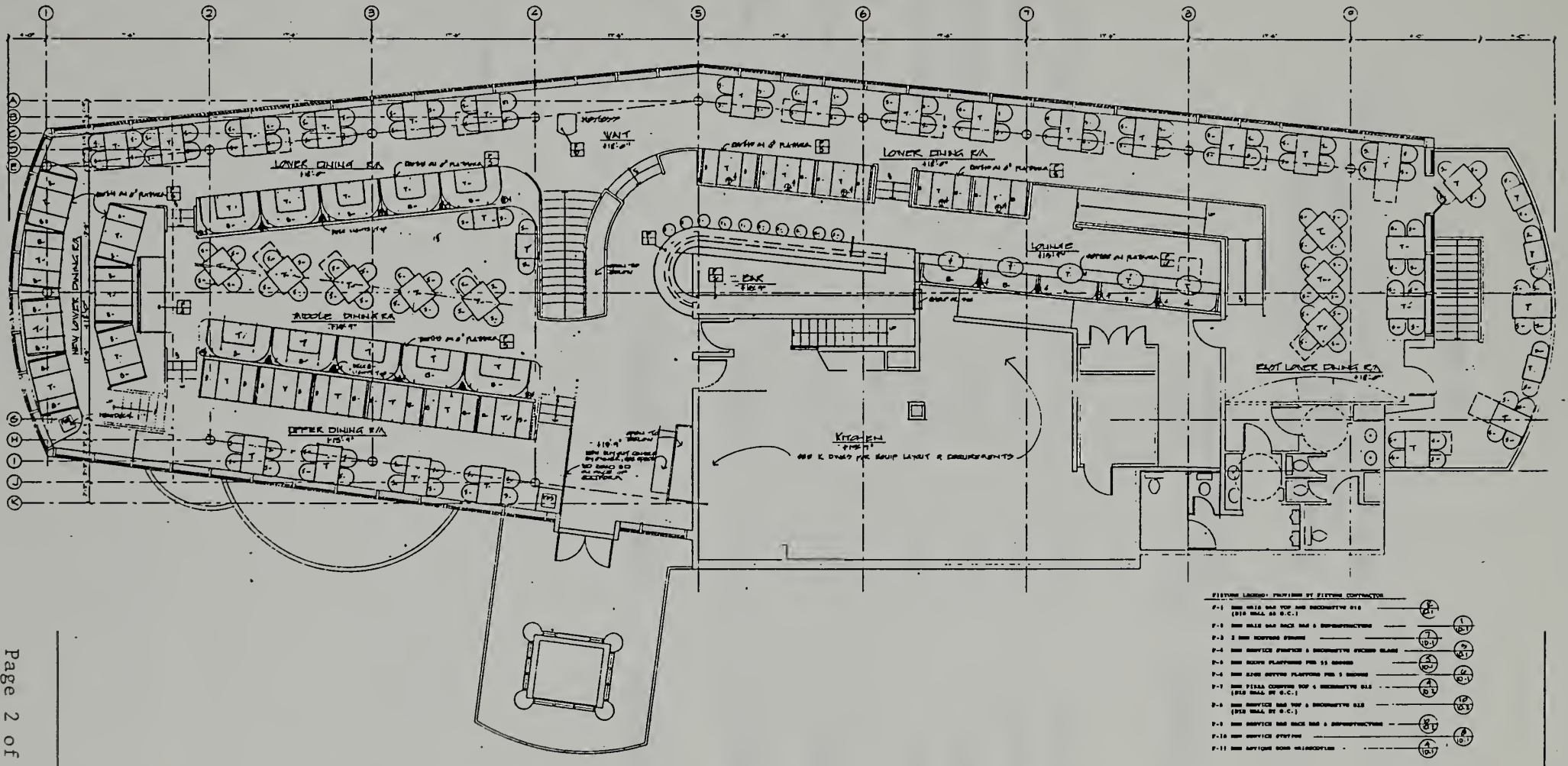
FIRST FLOOR

DATE 2/1/96

SHEET A-7

PLOT DATE: 13 JAN 96

EXHIBIT A



Page 2 of 2

Design Development

BAUM | THORNLEY ARCHITECTS

Addition and Remodel
Franciscan Restaurant
Fisherman's Wharf
San Francisco, CA 94133

SECOND FLOOR DEMOLITION & PIERS PLAN

DATE 5/1/96
SCALE 1/4"=1'-0"
DRAWN DM
JOB

SHEET A-8

PLOT DATE: 8 JAN 96

EXHIBIT B

FRANCISCAN RESTAURANT RENOVATION
CONSTRUCTION BUDGET AND
COSTS ELIGIBLE FOR RENT CREDITS

	Construction Budget Total	Per Sq. Ft	Eligible Costs
Architecture and Engineering	$180,200	$13.63	$180,200
Building Construction	1,360,785	102.91	1,360,785
Kitchen Improvements	329,000	24.88	225,000
Retail Store Improvements	150,000	11.34	15,000
Piling Repairs	50,000	3.78	Ø
Furniture, Fixtures, and Equipment	500,000	37.81	90,000
Completion Bond	27,200	2.08	27,200
Total	$2,597,185	$196.41	$1,898,185

G:\WP51\AGENDAS\FRANCIS2.MEM\KB:ibn\March 11, 1996

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 18, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Construction Contract No. 2610, "Pier 68 Shipyard Crane Improvement Project," authorization to advertise for competitive construction contract bids

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO ADVERTISE FOR BIDS FOR CONSTRUCTION CONTRACT NO. 2610, "PIER 68 SHIPYARD CRANE IMPROVEMENT PROJECT"

Early last year, the Port received a grant of $1,500,000 from United States Department of Commerce, Economic Development Administration ("EDA") and a grant of $250,000 from the California Trade and Commerce Agency to remove and salvage one shipyard crane and make improvements to up to five other shipyard cranes at Pier 68. The Port is also obligated to contribute $250,000 to the project.

Port staff has developed the contract documents for this work and will be ready to advertise for bids shortly. The work consists of furnishing all labor, equipment and materials, and performing all the incidental work necessary to dismantle and salvage one shipyard crane and to repair and modify up to five other shipyard cranes as funding permits. Staff recommends that the Commission authorize staff to advertise for competitive construction contract bids for this work.

Prepared by: Cliff Jarrard
Chief Harbor Engineer

THIS PRINT COVERS CALENDAR ITEM NO. 6A

agd-2610.cj

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **96-25**

WHEREAS, early last year, the Port received a grant of $1,500,000 from the United States Department of Commerce, Economic Development Administration ("EDA") and a grant of $250,000 from the California Trade and Commerce Agency for crane improvement work at Pier 68; and

WHEREAS, the Port is obligated to contribute $250,000 to this project; and

WHEREAS, Port staff has developed the contract documents for this work and will be ready to advertise for competitive bids shortly; and

WHEREAS, the work consists of furnishing all labor, equipment and materials, and performing all the incidental work necessary to dismantle and salvage one shipyard crane and to repair and modify up to five other shipyard cranes as funding permits; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby authorizes staff to advertise for competitive bids for Construction Contract No. 2610, "Pier 68 Shipyard Crane Improvement Project," at an estimated cost of up to $2,000,000.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 26, 1996.

_____
Secretary

agd-2610.cj

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 20, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Construction Contract No. 2594, "Ferry Building Seismic Repair Stage II", Authorization to Advertise for Competitive Construction Contract Bids

DIRECTOR'S RECOMMENDATION: Authorize staff to advertise for bids for construction Contract No. 2594, "Ferry Building Seismic Repair Stage II"

In 1994 the Port completed the Ferry Building Seismic Repair Stage I construction project. This project included repair of seismic damage to the Ferry Building resulting from the 1989 Loma-Prieta Earthquake. Under Stage II the Port will perform seismic mitigation work which will strengthen the Ferry Building's earthquake resistance capabilities.

H.J. Degenkolb & Assoc. prepared the structural and architectural drawings and technical specifications for Stage II. Port staff developed the path-of-travel disability accessible upgrade drawings and specifications, and SCA Environmental prepared the hazardous materials abatement specifications. The work consists of furnishing all labor, equipment and materials, and performing all the incidental work necessary to do the following:

1. Construct concrete shear walls in specific locations on the three floors of the southern portion of the Ferry Building;

2. Perform hazardous materials abatement in the areas affected by the renovation work; and

3. Perform disability accessible upgrades as required by the governing codes.

THIS PRINT COVERS CALENDAR ITEM NO. 6B

Stage II will be funded by FEMA/OES funds and Ferry Building Renovation funds. The estimated cost is between $2,500,000 and $3,500,000 and will take eight (8) months to complete.

Staff will require that contractors bidding on the work make good faith efforts to meet the Human Rights Commission's MBE/WBE goals, as stated in the contract documents.

Staff recommends that the Commission authorize Staff to advertise for competitive construction contract bids for this work.

Prepared by: Cliff Jarrard
Chief Harbor Engineer

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-29

WHEREAS, the contract documents for Contract 2594 are ready for advertising for competitive bids; and

WHEREAS, the work consists of furnishing all labor, equipment and materials, and performing all the incidental work necessary to construct concrete shear walls in specific locations on the three floors of the southern portion of the Ferry Building, performing hazardous materials abatement in the areas affected by mitigation work and performing disability accessible upgrades as required by governing codes; and

WHEREAS, the project will be funded by FEMA/OES and Ferry Building Renovation funds; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby authorizes staff to advertise for competitive bids for Construction Contract No. 2594, "Ferry Building Seismic Repair Stage II Project", at an estimated cost of $2,500,000 to $3,500,000.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 26, 1996.

_____
Secretary

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 20, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Professional Services Contract for Fisherman's Wharf Lighting Improvements, authorization to award

DIRECTOR'S RECOMMENDATION: Authorize staff to award the professional services contract for the "Fisherman's Wharf Lighting Improvements" to F.W. Associates, Inc.

The Commission previously authorized Port staff to issue an RFP for professional services for the design of Fisherman's Wharf Lighting Improvements. On October 3, 1995, the Port issued a request for proposals ("RFP") for engineering services for this project. On November 17, 1995, the Port received proposals from 11 engineering firms.

On December 19, 1995, a Port interview panel interviewed and evaluated four firms. F.W. Associates received the highest score following completion of the evaluations. All four firms were either certified MBEs or Joint Ventures with MBE team members, therefore all received HRC scoring adjustments.

Subsequently, the Port met with F.W. Associates to negotiate the fee. The Port and F.W.Associates agreed to a fee of $105,000 to provide the required engineering services. This fee includes the work to perform Phase I, which includes developing a conceptual

THIS PRINT COVERS CALENDAR ITEM NO. 6C

AGD-FWL.MB

lighting design, Phase II, including preparation of detailed design and construction documents and Phase III, including providing construction management support.

The Phases are described as follows:

Phase I: The consultant shall develop a cost effective conceptual lighting design proposal for the Fisherman's Wharf area including the inner and outer lagoon, the Embarcadero from Powell to Pier 45, Jefferson Street from Jones to Hyde, and the Ferry Arch at Pier 45. In developing this conceptual design, the consultant shall make presentations to the Fisherman's Wharf representatives and the Port Commission to obtain broad base input and approval.

Phase II: The consultant shall prepare and furnish the Port with the necessary plans, technical specifications and a cost estimate for the inner and outer lagoon and Pier 45 Shed 'A.' At this time, there is only sufficient funding for the construction of these facilities. The Port will then assemble contract documents and solicit bids for the construction of this work. The consultant shall also prepare plans, specifications and a cost estimate for the other components of the Fisherman's Wharf lighting. However, this is a future contract dependent upon funds becoming available.

Phase III: The consultant shall provide bid and construction support services during the bidding phase, prepare the necessary addenda, respond to contractor's Request for Information ("RFI's"), review shop drawings, attend construction meetings and perform job site observations during the course of construction.

Staff will obtain Commission approval before proceeding with the construction phase of this work.

The Human Rights Commission has confirmed that the selected consultant firm complies with all the requirements to receive a preference as a MBE/WBE firm, all in accordance with Section 12D of the San Francisco Administrative Code.

Staff recommends the award of this professional services to F. W. Associates, Inc.

Prepared by: Cliff Jarrard
Chief Harbor Engineer

AGD-FWL.MB

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-30

WHEREAS, the Commission previously authorized staff to issue an RFP for professional services work for the design of Fisherman's Wharf Lighting Improvements; and

WHEREAS, on November 17, 1995, the Port received proposals for this professional services work; and

WHEREAS, a Port selection panel reviewed all proposals and interviewed four proposers to select the best qualified consultant; and

WHEREAS, the selection panel selected the firm of F. W. Associates, a certified MBE firm; and

WHEREAS, the contract will provide for work in three phases including developing conceptual lighting design, detailed design and construction management support; and

WHEREAS, the Human Rights Commission has confirmed that this firm complies with all the requirements to receive a preference as a MBE/WBE firm, all in accordance with Section 12D of the San Francisco Administrative Code; and

RESOLVED, that the San Francisco Port Commission hereby approves the authorization to award the subject consultant contract for "Fisherman's Wharf Lighting Improvements", to F.W. Associates at a cost not to exceed $105,000.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 26, 1996.

_____
SECRETARY

AGD-FWL.MB

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 18, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Travel for one Port representative to attend the American Association of Port Authorities Finance Seminar in accordance with the Port's Fiscal Year 1995-1996 Budget

DIRECTOR'S RECOMMENDATION: APPROVE ATTACHED RESOLUTION

The American Association of Port Authorities (AAPA) will hold its bi-annual Finance Seminar on May 15-17, 1996 in Toronto, Canada.

This conference will include seminars on various topics of interest to the Port including financing trends and issues, capital access for ports, credit analysis, SEC disclosure requirements, and other areas of benefit. These seminars are typically attended by finance directors of north American ports.

The Executive Director seeks approval to have Mr. Ben Kutnick, Director of Administration attend the conference. This request is in accordance with the Port Commission's Fiscal Year 1995/96 budget and the estimated cost of this trip is $1,365.00.

Prepared by: Ben Kutnick
Director of Administration

THIS PRINT COVERS CALENDAR ITEM NO. 9A

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-24

WHEREAS, the Executive Director is requesting authorization for one Port representative to travel to Toronto, Canada, to attend the American Association of Port Authorities (AAPA) Finance Seminar on May 15-17, 1996 where financial issues facing ports throughout the country will be discussed; and

WHEREAS, the cost of this trip has been included in the Port Commission's Fiscal Year 1995-1996 budget; now, therefore, be it

RESOLVED, that the Port Commission hereby approves this travel request.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of March 26, 1996.

_____
Secretary

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 278340 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 19, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Approval of Travel for one Port representative to attend the IEG Sponsorship Profits Convention in accordance with the Port's Fiscal Year 1995-1996 Budget

DIRECTOR'S RECOMMENDATION: APPROVE ATTACHED RESOLUTION

The IEG Sponsorship Profits will hold its annual convention on April 14-17, 1996 in Chicago, Illinois.

This convention will include seminars on various topics of interest to the Port including marketing, cooperative sponsorship of events, media sponsorship and other areas of benefit.

The Executive Director seeks approval to have one Port representative attend the conference. This request is in accordance with the Port Commission's Fiscal Year 1995/96 budget and the estimated cost of this trip is $2,500.

Prepared by: Carolyn Macmillan
Marketing Manager

THIS ITEM COVERS CALENDAR ITEM NO. 9B

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-31

WHEREAS, the Executive Director is requesting authorization for one Port representative to travel to Chicago, Illinois, to attend the IEG Sponsorship Profits Convention on April 14-17, 1996 where various topics of interest to the Port including marketing, cooperative sponsorship of events, media sponsorship and other areas of benefit will be discussed; and

WHEREAS, the cost of this trip has been included in the Port Commission's Fiscal Year 1995-1996 budget; now, therefore, be it

RESOLVED, that the Port Commission hereby approves this travel request.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of March 26, 1996.

_____
Secretary

PORT OF SAN FRANCISCO

Ferry Building
San Francisco, CA 94111
Telephone 415 274 0400
Telex 275940 PSF UR
Fax 415 274 0528
Cable SFPORTCOMM
Writer

MEMORANDUM

March 20, 1996

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Frankie G. Lee, Vice President
Hon. Francis J. O'Neill
Hon. Preston Cook
Hon. James Herman

FROM: Dennis P. Bouey
Executive Director

SUBJECT: Authorization to make final payment and accept work of construction Contract No. 2591, "Piers 26 and 28, Removal of Lead Contaminated Soils from Roofs" with Ramcon Engineering & Environmental

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO MAKE FINAL PAYMENT AND ACCEPT ALL WORK UNDER CONTRACT NO. 2591, "PIERS 26 AND 28, REMOVAL OF LEAD CONTAMINATED SOILS FROM ROOFS" FOR A TOTAL COST OF $192,286.74.

On September 6, 1994, by Resolution No. 94-126, the Port Commission approved the award of Contract No. 2591, " Piers 26 and 28, Removal of Lead Contaminated Soils from Roofs" to Ramcon Engineering & Environmental at a total contract cost of $418,450.50.

The final cost of the work was $192,286.74 because the material on the roof did not contain the originally anticipated higher concentration level of lead. This allowed the removed material to be disposed at a Class II (non-hazardous waste) landfill rather than a more costly hazardous waste landfill. Although the work was completed in early 1995, the contractor filed a claim for additional money due to the large reduction of work scope. The Port settled the claim with no additional monies paid to the contractor. The contractor has accepted the final contract amount and signed a claims release.

Per an earlier agreement between Caltrans and the Port, Caltrans agreed to fund that portion of the work on Pier 26 and the Port agreed to fund that portion of the work on Pier 28. The final cost to Caltrans for Pier 26 work is $147,628.41 and the cost to the Port for Pier 28 work is $44,658.33.

Staff recommends that the Commission authorize the Executive Director to accept the work and make final payment to the contractor of $192,286.74.

Prepared by: Cliff Jarrard
Chief Harbor Engineer

THIS PRINT COVERS CALENDAR ITEM NO. 9C

agd-2591.cj

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 96-32

WHEREAS, on September 6, 1994, by Resolution No. 94-126, the Port Commission approved the award of construction Contract No. 2591, "Piers 26 and 28, Removal of Lead Contaminated Soils from Roofs" to Ramcon Engineering & Environmental at a total contract cost of $418,450.50; and

WHEREAS, the final cost of the work was $192,286.74 because the material on the roof turned out not to contain the higher concentration level of lead originally anticipated; and

WHEREAS, this allowed the material to be disposed at a Class II (non-hazardous wastes) landfill rather than a more costly hazardous waste landfill; and

WHEREAS, per an earlier agreement between Caltrans and the Port, Caltrans would fund the work on Pier 26 and the Port would fund work on Pier 28; and

WHEREAS, the actual final cost to the Port is $44,658.33 with Caltrans paying the remainder of $147,628.41; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby authorizes staff to make final payment and accept all work under Contract No. 2591, "Piers 26 and 28, Removal of Lead Contaminated Soils from Roofs", for a total cost of $192,286.74.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 26, 1996.

_____
Secretary

agd-2591.cj

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISION

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MINUTES OF THE MEETING
MARCH 26, 1996

1. ROLL CALL

The meeting was called to order by Commission President Michael Hardeman at 4:00 p.m. The following Commissioners were present: Michael Hardeman, Frankie Lee, Frank O'Neill, Preston Cook and James Herman.

2. APPROVAL OF MINUTES - February 27, 1996

ACTION: Commissioner O'Neill moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the minutes of the meeting were adopted.

Commissioner O'Neill stated he looks forward to the Pier 45 status report. On behalf of the Commission, Commissioner Hardeman welcomed Commissioner Herman to the Port Commission.

At 4:05 p.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9.

At 4:25 p.m., the Commission returned from executive session and convened in public session.

ACTION: Commissioner Lee moved approval to not disclose any information discussed in the executive session. Commissioner Cook seconded the motion. All of the Commissioners were in favor.

3. EXECUTIVE

A. Executive Director's Report: Status Report on the Urban Design Guidelines

Mr. Bouey stated that the Waterfront Advisory Board did a wonderful job in drafting the Draft Waterfront Land Use Plan. However, when staff reviewed the proposed plan, it was felt that one item lacking was urban design guidelines which also encompasses public access as well as historic preservation issues. It was necessary to address this issue: (1) to ensure a quality plan and quality projects emanating from the plan and (2) to build bridge with the community of what the Port wants to achieve. By creating a blueprint, citizens would be assured and have a certain level of comfort as to what will happen on the waterfront over the next decade.

He then introduced Dan Hodapp who has worked with the Technical Advisory Committee. He also mentioned that John Kriken of Skidmore Owings and Merrill is the consultant to the committee. As well, eight members of the public sit on the committee and assist Port staff in developing these guidelines. People have reacted favorably to what the Port wants to do and are getting a feeling that the Port is interested in quality and achieving something that is representative of the City of San Francisco.

Mr. Dan Hodapp stated that as part of the implementation measure of the Waterfront Plan, the committee is putting together urban design guidelines that cover public access and historic issues. The Port is also negotiating with BCDC over the next several months to see how policies that may affect the Port development of public access can be changed. It is expected that the results of the design guidelines will be a major part of information that goes into the negotiation and a major part of the product. The Technical Advisory Committee is comprised of representatives from AIA, BCDC, Save the Bay, SPUR, Waterfront Plan Advisory Board, American Society of Landscape Architects, and Landmarks Preservation Advisory Board and the Dept. of City Planning.

The first step undertaken by the committee was site analysis. Sites were divided into three common property types: (1) seawall lots; (2) bulkhead sites; and (3) piers. Past design studies were also looked at. The topics addressed are access, use, continuity of the waterfront, a working waterfront character, compatibility with adjoining districts and historic resources. The intent of the design guidelines is to identify the critical points to guarantee good design. The five main design objectives are: (1) views; (2) access to the waterfront; (3) continuity; (4) provide a clear destination at the end of piers; (5) give each particular planning area its own identity.

The Commission will now also receive the information that is mailed to the Technical Advisory Committee to keep them up to date with the process and welcome their comments.

Commissioner Cook thanked Mr. Hodapp for the presentation and commented that the Port must ensure that it is a pleasant place and has a lot of open space for San Franciscans. He'S pleased with what he'S seen so far and appreciates that the Commission is apprised of the progress. He asked for the time frame for the guidelines' adoption. Mr. Hodapp responded that they hope to have the guidelines ready for adoption by the Port Commission at the same time as the Waterfront Plan; which means draft urban design guidelines should be ready some time this summer. The draft will be taken individually to many community groups, make revisions and have it ready for Commission'S adoption. In response to Commissioner Cook'S inquiry if this is a separate document or a part of the Waterfront Plan, Mr. Hodapp responded that it is a separate document; it is an implementation action of the Waterfront Plan. Commissioner Cook inquired why these guidelines are necessary to be adopted by the Planning Commission. Mr. Hodapp replied that the Planning Commission has great interest in anything the Port does. Many types of projects require Planning Commission approval and require a special use permit. To speed project approval, when we do need a special use permit, Planning will have already

resolved urban design and physical aspects of the project.

Commissioner Lee inquired if this will affect the outcome of the EIR process. Mr. Hodapp replied that the EIR process is looking at some land use issues such as changes to the City'S Master Plan and other policies. There is very close coordination with Anne Cook, Diane Oshima and Kari Kilstrom in preparing the EIR. Commissioner Lee commented he appreciated the work put forth on this project.

Commissioner O'Neill also thanked Dan Hodapp for the presentation and inquired if economic enhancement is being considered for this plan. Mr. Hodapp replied that they are considering economic aspects from several different points. A core group within Port staff is looking into tough technical issues such as pier condition, general property condition, marketability, and factoring in historic information. They are combining all that information and run sample projects as well. Commissioner O'Neill inquired if a restaurant is envisioned at the Rincon Park Pier. Mr. Hodapp replied to the affirmative and added that the guidelines addressed the restaurant in particular and the Waterfront Plan has defined a height of 17 feet for the restaurant.

Commissioner Herman commented that this is a great move to effectively beautify and modernize the waterfront. He mentioned about ordinary people being able to walk on the waterfront so that they can directly get to appreciate the work that has been done. He realizes that the Executive Director and staff are on top of this issue, but wondered what can be done with the skateboarders/rollerbladers presenting a hazard to the public. He realizes that this is a police enforcement issue but unless something is done, it will continue to drive people away from the waterfront.

Mr. Hodapp stated that they will try to take this into consideration as they move forward and as they review the Embarcadero roadway project.

Commissioner O'Neill stated that he received letters from concerned citizens regarding dangerous skateboarding on the Embarcadero. He wrote a letter to them and a copy was provided to the Executive Director. A Task Force is being formed from Central Station and there is a skateboard park in the City.

Commissioner Lee echoed the same sentiments. Commissioner Cook stated that he too received the same letters. From his observation, the bench projects seem to attract skateboarders. He hopes that the Task Force may look at the possibility of removing the concrete benches and establishing a skateboard park on Pier 30/32.

After further discussion, Commissioner Herman and Commissioner O'Neill volunteered to be on the Task Force.

Commissioner Hardeman echoed the same comments with regard to the skateboarders. With regard to the urban design guidelines, Commissioner Hardeman commented that the legends and the graphics showing views and open space are time saving and very effective. Addressing the issues such as height limits early on is also healthy.

Commissioner O'Neill asked Mr. Hodapp to consider casual boating on the piers. Mr. Hodapp replied that they are considering this.

B. Commendation for Commissioner Anne Halsted. (Resolution No. 96-26)

Mr. Bouey stated that Commissioner Halsted holds a place of distinction in the history of the Port Commission. Initially appointed by Mayor Feinstein in 1984, she was the first woman appointed to the Port Commission. She also served two years as President of this Commission, another first. She was reappointed in 1991 by Mayor Art Agnos. The Port Commission has benefitted greatly not only from her knowledge but her experience. She is the President of SPUR and is involved in a dozen civic organizations. She was able to bring that community knowledge and viewpoint to the deliberations at the Port. For that reason, staff thought it would be most fitting for the Port Commission to express its appreciation as well as its best wishes and gratitude for her many years of fine service and award her the Order of Merit, with the Rank of Commander.

Commissioner Lee commented that he has joined the SPUR board and will be working with Anne Halsted.

Commissioner Cook stated that there'S a lot to be said about Anne Halsted because of her great ability to take on a lot of projects simultaneously. He wonders how she does it and how her husband stands it because she has so many things on her plate at one time. Anne has devoted a great deal of time to non-profit work, government work and civic duties. She certainly should be commended for those activities over the years. He knows that this Port Commission and Port staff can appreciate all that she has accomplished during her long tenure. She was very helpful and beneficial in his tenure as President. He appreciated all that she has done for him all these years.

Commissioner Hardeman echoed the same comments. He appreciates the fact that we were able to make her a Commander and perhaps present this at a social function. Mr. Bouey stated that a plan is in the works.

Commissioner Herman wished Anne Halsted well and expressed his own appreciation for her good work as a Commissioner.

ACTION: Commissioner Cook moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

4. LEGISLATIVE

5. TENANT & MARITIME SERVICES

A. Approval of consent to assignment of lease, resetting percentage rental, change in type and class of business, and encumbrance of leasehold regarding Fish Alley Bar and Grill located at 400 Jefferson Street. (Resolution No. 96-27)

Mr. Bouey stated that the current lease which expires in 2006 is held by Sanford Cohn and Jake Francisco. The leasehold comprises of 7,430 sq. ft., of which 5,760 ft. is restaurant and 1,620 ft. is art gallery. They currently pay $3,173 a month base rent. Percentage rent is set at 5% for food; 7% for beverage, 10% for other retail uses; and 7% for art. They propose to assign their lease to SFO/Forecast Inc. for which they will receive $900,000. The assignee plans to redevelop the premises and devote approximately 23% to retail and the remainder will be devoted to both casual and full service dining. Under the assignment, the assignor is not being released from their lease obligations; as well, the assignee must spend $150,000 in improvements. The percentage rent will be adjusted for this lease retroactively to April 1995. The percentage rents will be set as follows: retail wine sales will be at 6.75%; other retail will be 8.75%. The restaurant will have a tier approach for food sales; for the first $50,000 it will pay a percentage rent of 6.75%; between $50,000-$75,000 it will pay 7.75% and anything greater than $75,000 per month it will be assessed a percentage rent of 8.75%. He added that it'S the intention of staff to grant them a revokable permit for the use of sidewalk; the permit is for a non-exclusive use and may be revoked at any time.

Commissioner Herman asked if the addition of the sidewalk is an amendment to the lease that is now held. Mr. Bouey replied that it is not part of their leasehold. It is a revokable permit; it could be granted today and taken back in 30 days. Commissioner Herman asked what the permit will be used for. Mr. Bouey replied that it will be used for outdoor dining. Commissioner Herman asked if it will interfere with fish business. Mr. Bouey replied that this restaurant is situated at the corner of Jefferson and Leavenworth; and will not interfere with fish processing. Commissioner Herman requested a site visit as he has questions about it. Mr. Bouey stated that Mr. Kirk Bennett would be happy to give Commissioner Herman a site tour.

Mr. Edward Price, Vice President of Addi Galleries Inc., representing Addi Galleries employees and himself, gave a background of their company. They have been operating successfully under difficult conditions. The owners have refused to upgrade at their continued suggestion. They have spent more money to upgrade the building than the owners. During the last five years, the ownership of Fish Alley Bar and Grill saw their sales slipping every year. The gallery sales have always exceeded that of the restaurant'S. They were told that there will be a new buyer for the building and they were told they would be able to negotiate a new sublease with the new owners so that they could continue with their gallery. At no point were they told they were not part of this new partnership. They were told that they would like them to be tenants and would like to negotiate with them. They were just notified that they have 30 days to find a new location. He confronted Mr. Cohn about it and he said he was not aware that the gallery was not going to be included. This violates any amicable agreement they thought they had and he appealed to the Port to give them 120 days to find a new location because they would like to stay on the wharf. They are concerned that they don't have enough time to notify their local and out of state clients.

Mr. Bouey commented that Mr. Price has a sublease with the tenant that provides for a 30-day termination clause, of which the gallery negotiated with the tenant and the Port is not a party to it. Mr. Price may have legitimate issues but they would have to

pursue them with their former landlord and the prospective landlord. Mr. Price stated that had they been told four months ago that they were not included, they would have started looking for a location then.

Commissioner Herman inquired if we could appeal to the leaseholder on the basis of fairness that he do everything possible to extend the lease so as to accommodate the sublessor in searching for suitable wharf location. Based upon the gallery'S good records, it warrants as much consideration as possible. Mr. Bouey replied that Mr. Cohn and/or Mr. Francisco might want to respond to the request.

Mr. Sanford Cohn stated that he and his partner, Jake Francisco, currently hold the lease at Fish Alley Bar and Grill and sublease to Addi Gallery. Mr. Addi was well aware that they have a cancellation clause of 30 days. On several occasions, Mr. Addi approached them to try to work out a lease and informed him they were not in any position to do so. If this assignment is postponed 120 days, it will present a problem. At no time were Addi Galleries informed that there was going to be a gallery. Four months ago, he kept them up to date on everything. When it was finalized with Mr. Bennett on March 11, he notified Mr. Price the following day that the assignment had been finalized. He never told him a gallery would be permitted.

Mr. Bouey interjected that perhaps there might be a mid-way compromise wherein both parties could be accommodated. He asked Mr. Cohn if he could give the gallery 60 days, instead of 30 days. Mr. Cohn replied that he was in no position to make that decision as it belongs to the new buyer.

Commissioner Cook mentioned that while he has not had the opportunity to read the agreements between the two parties; it seems to be a legal agreement. It is a lease, a contract and everyone should abide by that. Furthermore, this issue should not be before the Commission; this should be handled between a landlord and a tenant/or subtenant.

Commissioner Herman stated that it is not unusual in any business relationship one that has been well functioning as this one to ask on a humanitarian basis that all effort be expended to extend the lease so as to allow him sufficient time to find another location. He reiterated if it can be done, Mr. Cohn could talk to the new owners. Mr. Cohn stated that the new owners are not willing to wait that long and not willing to go along with this proposition. Commissioner Herman requested somewhere in between, as stated by the Executive Director, in excess of 30 days; and if possible to work out an arrangement if the gallery is willing to take continuing risk to maintain his small business. Given its track record, it is not unreasonable to ask that some further evaluation be made on its behalf. Mr. Cohn mentioned that this is not the only gallery they have; they have other galleries in the state. At this point, it wouldn't be possible to extend as the owners are anxious to start and this will be advantageous to the Port. Commissioner Herman reiterated that he is requesting consideration from the new owners.

Commissioner Cook stated that what we have before us is an opportunity for the Port to pass a resolution which will enhance our position and that of the restaurant. He has

no problems with requesting Mr. Cohn to try to work out arrangement between the parties involved.

Mr. Nick Haffey, President of the SFO Forecast, stated that he has never been contacted by Mr. Price. This is the first he'S heard of any problem; and he was not in a position to contact Addi Galleries as they are the tenants of Mr. Cohn and Mr. Francisco. He would be happy to talk to them at any time and be as reasonable as possible. He understands Mr. Price'S position but it is imperative that the restaurant is open by summer; they are working hard to get plans ready and to start construction. He would be happy to take the humanitarian approach as much as possible and he'll be talking to them extensively within the next week or so. Commissioner Herman thanked Mr. Haffey for his consideration.

ACTION: Commissioner Cook moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

B. Approval of lease amendment for Franciscan Restaurant located at Pier 43-½ to provide rent credits for proposed renovation. (Resolution No. 96-28)

Mr. Bouey stated that the Franciscan Restaurant has recently undergone a change in management. Under the current lease, they pay a base rent of $12,530. They had paid a percentage rent of 5% for food; 6-½% for alcohol; 7% for the crabstand and 6-½% for others. Two meetings ago, the Port Commission changed the percentage rent to 6-½% for food and crabstand sales and 8-½% for all other. For fiscal year 94/95, Franciscan paid a total rent of $226,000 The new management has proposed a renovation plan of approximately $2.6 million. Upon the substantial completion of the renovation, the base rent would adjust to approximately $226,000. The base rent is still subject to CPI adjustments every five years. Of the $2.6 million planned for the renovation, $1.9 million is eligible for rent credits under the Port Commission'S policy. Following substantial completion, the tenant can take rent credits for 50% of the eligible cost, up to a maximum of $949,000. The tenant will amortize these rent credits over a seven-year period or until the $949,000 is realized, whichever occurs first. It is necessary to point out to the Commission that not only does this proposed rent credit plan meet its guidelines but in the short time that the new management has been at the Franciscan Restaurant, sales have increased about 15% a month.

ACTION: Commissioner Cook moved approval; Commissioner O'Neill seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

6. FACILITIES & OPERATIONS

A. Authorization to advertise for competitive bids for Contract No. 2610, "Pier 68 Shipyard Crane Improvement Project." (Resolution No. 96-25)

Mr. Bouey stated that a couple of months ago, staff brought to the Commission the award of a grant. The Port received $1.5 million from the US Dept. of Commerce,

through their EDA program. The Port also received a grant of $250,000 from the CA Trade and Commerce Agency; as well, the Port is contributing $250,000. The purpose of these grants and the Port'S money is to remove and salvage one crane at Pier 70 and to repair the other five shipyard cranes. This will provide for a more effective and more efficient operation. Again, a benefit to our tenant and to the Port.

ACTION: Commissioner Herman moved approval; Commissioner O'Neill seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

B. Authorization to advertise for competitive bids for Contract No. 2594, "Ferry Building, Stage 2, Earthquake Repair." (Resolution No. 96-29)

Mr. Bouey stated that this is a continuing project at the Ferry Building, a part of the ongoing effort to seismically strengthen the building to ensure that we meet all codes and provide proper safety and protection from hazards to our tenants. The proposed contract calls for the construction of concrete shear walls, will perform hazardous materials abatement in the areas affected by the renovation and will also perform disability accessible upgrades as necessary. This contract will ultimately call for somewhere between $2.5 to $3.5 million to be spent. It is being funded entirely by FEMA.

Commissioner Lee inquired if staff can be more specific as to the amount of the contract. Mr. Cliff Jarrard, acting Director of Facilities & Operations, replied that staff is deliberately vague in its estimate so as not to give the price away and to make the bid more competitive.

ACTION: Commissioner Cook moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

C. Authorization to award consultant contract for Fisherman'S Wharf Lagoon Lighting," to F.W. Associates for $105,000. (Resolution No. 96-30)

Mr. Bouey stated that in October, the Commission authorized Request for Proposals for engineering services for this project. Responses were received and on December 19, staff interviewed the four respondents. F.W. Associates received the highest score. Of particular note, all four firms were certified MBEs or joint ventures with MBEs. Alice Herndon in working with our engineering staff has done a very conscientious job on performing outreach into the community. The purpose of the contract is to provide Fisherman'S Wharf lighting improvements. We are trying to achieve not only a heightened sense of security; but more importantly, a certain romanticism at the Fisherman'S Wharf. This is an area frequented by not only tourist but people who live in the City. Rather than having stark lighting, we would like something that is a little bit more conducive to the area.

Commissioner Cook was concerned about awarding a contract when there is not sufficient funds to complete the design and asked for clarification of the likelihood of

completing the contract. Mr. Jarrard clarified the scope of the project. The first phase of the project is for the consultant to do an integrated conceptual design of all of the Fisherman'S Wharf area. The consultant will do an overall conceptual design and come back to do design work for that which we can afford to construct; and also design work for that which will be constructed in the future. The benefit is we have an integrated design done by one consultant. In response to Commissioner Cook'S inquiry whether staff has budgeted money for the actual implementation of the plan, Mr. Jarrard replied that we have budgeted money to do construction of lighting for the inner, outer lagoon and the lighting to Shed A. In response to Commissioner Cook'S inquiry about the timing of the project, Mr. Jarrard responded that staff hopes to bring a consultant on board in one month; the conceptual design takes about 3 months. Staff is expected to present the first concept to the Commission then. The final design of the lagoon will take another couple of months and the final construction of the lagoon lighting is expected by June of next year. No work will be done during the tourist season.

Commissioner Lee commended staff for selecting F.W. Associates. He knows of the firm and they are one of the best electrical consulting firm in the City, MBE or not. They are very successful in their own right. They are the prime electrical consultant for the new International Airport and also prime consultant for quite a few of the major retrofit jobs in the City, including the Opera House and City Hall. He'S sure they will do a good job for the Port.

Commissioner Hardeman commented that representatives from the area asked him to hasten this project along. Mr. Bouey mentioned that he is meeting tomorrow with a representative from the Fisherman'S Wharf area. Mr. Bouey stated that he does not know that there'S enough time for our consultant to do the work in a satisfactory fashion so that we could start construction to meet Fisherman'S Wharf schedule; particularly with all of the bidding processes we have to go through. While we may lose another season, it'S better that we do this in a thoughtful and rational way so we don't impact the tourist season and get this done right for the following season.

ACTION: Commissioner O'Neill moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the resolution was adopted.

7. PLANNING & DEVELOPMENT

8. ADMINISTRATION

9. CONSENT CALENDAR

A. Approval of travel for one Port representative to attend the American Association of Port Authorities Finance Seminar in Toronto, Canada, on May 15-17, 1996, in accordance with the Port'S Fiscal Year 1995-1996 Budget. (Resolution No. 96-24)

B. Approval of travel for one Port representative to attend the Annual IEG Sponsorship Profits Convention in Chicago, Illinois, on April 14-17, 1996, in accordance with the

Port'S Fiscal Year 1995-1996 Budget. (Resolution No. 96-31)

C. Authorization to accept the work and make final payment to the contractor for Contract No. 2591, "Pier 26 and 28, Removal of Lead Contaminated Soils from Roofs." (Resolution No. 96-32)

ACTION: Commissioner Cook moved approval; Commissioner Lee seconded the motion. All of the Commissioners were in favor; the items on the consent calendar were adopted.

10. NEW BUSINESS / PUBLIC COMMENT

Commissioner Hardeman commented about questions raised regarding Pier 45 at the last meeting. He met with Sharon Polledri and Dave Mercado. A package was sent out to the Commission on March 5 and it was very informative. Congresswoman Pelosi sent a strong letter of support to the Secretary of Commerce on the advisory group'S efforts. All segments of the Fisherman'S Wharf community are representative and active in the advisory group such as the fish processors, commercial fishermen, restauranteurs and members of neighborhood organizations, and businesses. Everyone is working together for a common goal. Traffic is still going to be a problem but they are working on it. Ms. Polledri and Mr. Mercado did a good job in answering all of Commissioner Cook'S questions. Commissioner Cook responded that he wanted to ensure that things are on time and he'S sure that the end product will be something that the Port can be proud of and wants to see it done as soon as possible.

Commissioner Herman stated that he intends to take an overview of what'S happening. He has participated with Congresswoman Pelosi in getting some grant money and he is preoccupied with a notion that we should assign as much possible to the fishing industry in this area. He wants to evaluate it in keeping what the appropriate needs for Pier 45 and surrounding areas for the purpose of maximizing fish processing opportunities. He is not suggesting that something other than that is the case but he wants to take a good hard look at it and satisfy himself because of his own strong feelings that we are adhering to the same course.

11. EXECUTIVE SESSION

At 5:50 p.m., the Commission Secretary announced that the Commission will withdraw to executive session to discuss the following matters:

Commissioner Hardeman granted Commissioner Herman'S request to be excused to attend the executive session.

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR - ***This session is closed to any non-Port representative.***

Property: Port property located at Seawall Lot 344 adjacent to Cargo Way.
Person Negotiating: Port representative: Dennis P. Bouey, Executive Director
AES Representative: Mark Woodruff

Under Negotiation: ____ Price ____ Terms of Payment ✓ Both

An executive session has been calendared to discuss real property negotiations between the Port and AES, a California corporation, regarding Cogeneration Plant. This is specifically authorized under California Government Code Section 54956.8.

B. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION AND ANTICIPATED LITIGATION MATTERS

1) Johnson v. CCSF, et al; CCSF v. National Park Service et al U.S. District Court No. 95-2675 SAW, pursuant to subdivision (a) of California Government Code Section 54956.9

2) Initiation of Litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case)

   (a) Red and White Fleet, Inc. (formerly Harbor Carriers, Inc., a subsidiary of Crowley Corporation) operating at Pier 41.

3) Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case). (This item was discussed at the beginning of the meeting.)

4) Application for Leave to Present a Late Claim - David G. Plant, pursuant to California Government Code Section 54956.9(b)(1).

   The City Attorney is of the opinion that based on existing facts and circumstances, discussion of existing and anticipated litigation matters in open session would prejudice the legal position of the Port. An executive session is specifically authorized under California Government Code Section 54956.9(a)(b)(c)(1).

C. Vote in open session on whether to disclose Executive Session discussions (S.F. Admin. Code Sec. 67.14)

At 6:50 p.m., Commissioners Hardeman, Lee, O'Neill and Cook returned from executive session and convened in public session.

ACTION: Commissioner Lee moved approval to not disclose any information discussed in the executive session, except for Item 11B (4), which they decided not to accept the late claim. Commissioner Cook seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 6:52 p.m.

Imelda Alvarado
Commission Secretary

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